

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NO. 23-CR-20121

ASHLEY GRAYSON AND
JOSHUA GRAYSON,

Defendants.

TRANSCRIPT OF THE TRIAL
BEFORE THE
HONORABLE JON P. MCCALLA

MONDAY
MARCH 25, 2024

TINA DuBOSE GIBSON, RPR, RCR
OFFICIAL REPORTER
FOURTH FLOOR FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

A P P E A R A N C E S

Appearing on behalf of the Government:

PATRICK NEAL OLDHAM
BRYCE PHILLIPS
United States Attorney's Office
167 N. Main Street, Suite 800
Memphis, Tennessee 38103
(901) 544-4231
neal.oldham@usdoj.gov
bryce.phillips@usdoj.gov

Appearing on behalf of the Defendant Ashley Grayson:

SCOTT H. PALMER
MICHAEL LEVINE
Scott H. Palmer, PC
15455 Dallas Parkway
Suite 540
Dallas, Texas 75001
(214) 987-4100
scott@palmerperlstein.com
michael.levine@palmerperlstein.com

LESLIE I. BALLIN
Ballin, Ballin & Fishman, PC
200 Jefferson Avenue
Suite 1250
Memphis, Tennessee 38103-2007
(901) 525-6278
lballin@bbfpc.com

Appearing on behalf of the Defendant Joshua Grayson:

MICHAEL E. SCHOLL
The Scholl Law Firm
200 Jefferson Avenue
Suite 1500
Memphis, Tennessee 38103
(901) 529-8500
mike@scholl-law-firm.com

1 MONDAY

2 MARCH 25, 2024

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4
5 THE COURT: I have received and reviewed the
6 motion by the United States in this matter on the evidence
7 that the defendants propose to possibly use as alleged
8 impeachment, and it appears that the Government's motion is
9 correct.

10 I will look at it a little more, but I've looked
11 at it. I read it all, reviewed it yesterday, and it looked
12 like the Government was correct on that. So if you have
13 anything in your PowerPoints or anything else that you intend
14 to use that might -- and I had trouble printing the
15 defendant's PowerPoint, but we're printing it downstairs
16 again. Then you will need to remove that. And on the
17 PowerPoints, I was a little concerned.

18 The PowerPoints are just what they are. And
19 opening statements are limited, and so it looks like
20 everybody is trying to make a closing argument. Is that what
21 you're doing?

22 MR. OLDHAM: No, Your Honor. I'm just trying to
23 lay out a timeline. There won't be any argument. Defense
24 counsel has had it. I don't know if they think --

25 THE COURT: No, I looked at it. I looked at it.

1 Yours looked okay, but I was a little concerned about the
2 potential for improper use of either side. I have to be, you
3 know, even to everybody, and I want to remind everybody that
4 you can't argue. Also I want to make sure we've got a clear
5 limit on the time.

6 This is a case where, typically, opening
7 statements by the parties would be pretty short, and I think
8 we probably -- we'll talk about it usually in every case. We
9 weren't going to talk about it much here.

10 So I'm going to ask the Government how long your
11 opening statement would be. I'm thinking you're thinking 15
12 to 18 minutes?

13 MR. OLDHAM: Your Honor, I believe we timed it,
14 and it was a little over 20.

15 THE COURT: Twenty. It looked about 20. I mean,
16 I couldn't quite tell because you can't tell what you're
17 going to say --

18 MR. OLDHAM: Yes, Your Honor.

19 THE COURT: -- in addition. So that's sort of
20 typical, and that's not a problem.

21 So the Government is looking at about 20.

22 Now, we've got two defendants, obviously, and
23 we're always going to start, as I understand it, with
24 Ms. Grayson. That's listed on the indictment. That's how
25 we're going to do that.

1 About how long do we think we're going to take on
2 the open on that?

3 MR. PALMER: I would say at least -- I have mine
4 timed about 20 to 25 minutes, Your Honor. There's a lot to
5 unpack.

6 THE COURT: It's actually not very much. I hear
7 you saying it's a lot, but I'm trying to caution everybody
8 we're going to stay within the rules. We're not going to
9 stay within vast universe.

10 MR. PALMER: Twenty minutes is fine.

11 THE COURT: Twenty minutes is about right. And
12 so just be mindful of that. I mean, I know you're used to
13 doing this all the time. So just be mindful if we started
14 going past 20, let's say you got to 22, 23 minutes, I would
15 probably say, well, that's about the amount of time we
16 allocated for opening statement. And that just means one
17 last sentence and sit down or not even one last sentence,
18 but, you know, just go ahead. That shouldn't be a problem.
19 I mean, it's pretty direct -- that's how I'm looking at it.
20 Maybe there's something more complicated than I think.

21 All right. Mr. Ballin, are you doing opening
22 here?

23 MR. BALLIN: No, sir.

24 THE COURT: I know you're not. So let's hear
25 from -- yes, sir?

1 MR. BALLIN: Matter of fact, if there was a seat
2 in the hallway for me, that's where I would be.

3 THE COURT: Oh, no, you're stuck here. You can't
4 go anywhere. We got you. We can't let you go anywhere.

5 Okay. And so let's check with counsel for the
6 co-defendant?

7 MR. SCHOLL: That's me, Your Honor. I had to
8 find a place to sit amongst everybody because it's just me.

9 THE COURT: I know, you managed to nail down a
10 good spot, though.

11 MR. SCHOLL: I did manage to find a good spot,
12 Your Honor. I do not have co-counsel in this, so everything
13 is going to come from me.

14 THE COURT: I was trying to figure out how we're
15 doing the seating. I was -- you could tell what I was doing
16 because you stuck Mr. Ballin over there, and I'm confused.

17 MR. SCHOLL: We're sort of mixed in here, Your
18 Honor. I represent Mr. Grayson.

19 THE COURT: Right. Exactly.

20 MR. SCHOLL: No one else is with me, and --

21 THE COURT: Right. So how do you want to sit?
22 You tell me how you want -- we tried -- do you remember
23 the --

24 MR. BALLIN: I can sit behind Mr. Palmer. I
25 don't mind. I don't need to be at the table.

1 THE COURT: I think I need to ask you to do that.
2 You know I hate to do that, but I think that's what I need to
3 do. And I need to then let people switch a little bit. Is
4 that okay? Normally -- you remember that, we had a very
5 somewhat famous case in one of the Danny Owens cases, Blake
6 Owens. Do you remember that?

7 MR. SCHOLL: (Moving head up and down.)

8 THE COURT: And counsel was very careful to
9 always sit at an appropriate distance from the co-defendant.
10 Now, I'm -- they probably want to sit right next to each
11 other, but you don't recall that.

12 MR. SCHOLL: I know -- I do recall that, Your
13 Honor.

14 THE COURT: Well, it's always fair to say that
15 there should be, if possible, a sort of visible distance, not
16 a lot, just a little bit, so that we're not being -- so that
17 everyone is individually determined versus some sort of group
18 mentality. We're not doing that. It's everybody is
19 individually charged.

20 MR. SCHOLL: I am -- it's not going to be a group
21 effort, Judge. We have a different defense than Ms. Grayson.

22 THE COURT: Right. How do you -- tell me what
23 you want to do.

24 MR. SCHOLL: I can sit wherever. I just need
25 enough area to work.

1 THE COURT: Tell me what you want to do. I'm
2 thinking about putting you down over --

3 MR. SCHOLL: That's fine. I may have --
4 sometimes need to ask for someone to speak up a little bit
5 because of my hearing.

6 THE COURT: Oh, I understand.

7 MR. SCHOLL: But I'm not shy.

8 THE COURT: I'm going to actually -- if it's okay
9 with you, it seems to me that visually and for an
10 understanding as to the separateness -- and you have a
11 different approach, right?

12 MR. SCHOLL: I do, Your Honor. So how about
13 myself and Mr. Grayson, Mr. Grayson can sit on the end. I'll
14 sit right here next to Mr. Grayson, if that's all right?

15 THE COURT: I think so.

16 MR. SCHOLL: And I know Your Honor was asking
17 questions about opening statements.

18 THE COURT: I am, and I'm coming back to that.

19 MR. SCHOLL: Okay.

20 THE COURT: I want to make sure we're seated in a
21 way that you're comfortable. That both defendants are
22 comfortable. They feel like it's the appropriate visual.

23 MR. SCHOLL: I'll sit and get annoyed by
24 Mr. Ballin.

25 MR. BALLIN: Judge, may I sit here?

1 THE COURT: Absolutely. Sure.

2 MR. SCHOLL: I almost objected to that, Your
3 Honor, because he's --

4 THE COURT: Well, he's got a different haircut
5 and different glasses, and it's really confusing.

6 MR. BALLIN: I'm still a hippie at heart.

7 THE COURT: I know. I know.

8 MR. SCHOLL: At least everyone knows I'm better
9 looking.

10 THE COURT: I might remember that, yeah.

11 Mr. Scholl, I think that's a little better, with
12 all due respect.

13 MR. SCHOLL: I prefer that, Your Honor, actually
14 I just --

15 THE COURT: Well, we all try to get along. We
16 all try to get along.

17 Now, where is our paralegal that's keeping track
18 of stuff? because I want to make sure we have --

19 Yes, sir?

20 MR. PALMER: We have Mr. Chris Faulk, who is our
21 trial tech coordinator. He's not a paralegal, but he is
22 going to be handling our exhibits.

23 THE COURT: I'm going to ask him to spell his
24 name so I've got it right.

25 TRIAL TECH: Christopher Faulk, F-A-U-L-K.

1 THE COURT: Mr. Faulk, okay. Tell me your
2 official job.

3 TRIAL TECH: Trial tech. I'll be presenting the
4 evidence for -- on behalf of the defendant, Ashley Grayson.

5 THE COURT: Thanks. Appreciate it.

6 Now, what we do say in every case -- and I'm
7 going to get back to Mr. Scholl in just a second -- is that
8 if a party -- let's say that Mr. Scholl wants to display
9 something that, Mr. Faulk, you displayed. He's entitled to
10 call on you because that's just the way to do it. It's
11 just --

12 TRIAL TECH: Yes, sir.

13 THE COURT: -- the proper courtroom etiquette.
14 Same thing for the Government, and vice versa. So we don't
15 want anybody saying, well, it's not my stuff, he's got to get
16 his own.

17 I haven't really run into lawyers who try to do
18 that. That's pretty routine. So is that okay?

19 TRIAL TECH: Yes, sir.

20 THE COURT: Good deal. Thank you.

21 Okay. Mr. Scholl, we were getting back to you on
22 timing.

23 MR. SCHOLL: Yes, Your Honor. I have no
24 PowerPoint Your Honor. I'm, in fact, an old school. I would
25 mess up the technology if I did it. So I'm estimating --

1 because I think everybody is going to cover most of the main
2 timelines before I get up and speak. I'm estimating maybe
3 10, 15 minutes at the most.

4 THE COURT: That sounds about right, actually.

5 MR. SCHOLL: I'm just pinpointing stuff that's
6 just relevant to Mr. Grayson for the jurors to look out for,
7 and then I will be sitting down.

8 THE COURT: Sure. That's fine. I think we're
9 squared away.

10 Yes, sir, Mr. Palmer?

11 MR. PALMER: Your Honor, I want to introduce a
12 couple of other folks that are on our team. This is Amanda
13 Fields. She is one of our expert witnesses we've designated
14 back in November.

15 THE COURT: Okay. Yes. Do you?

16 MR. PALMER: We also have Emily McDonald. She's
17 a consultant who helps pick juries.

18 THE COURT: That's fine. The use of improper
19 factors in selection of a jury is strictly illegal. I will
20 enforce that rule. And so if there's a use or an attempt to
21 use characterizations, bias, prejudice, assumptions, that is
22 problematic. It should be problematic. You shouldn't do it.
23 And I don't think we'll probably have a problem there. But I
24 will go through the jury selection process, which starts with
25 those questions.

1 Now, I want to remind everybody that you will not
2 stand up when the panel comes in. They are not jurors yet.
3 And they will all have numbers. The number -- and we'll --
4 we can refer to them by their number or by their seat number.
5 But you will not address them in any other way.

6 I may ask some questions that may provide some
7 personal data. Not a lot, but some, if need to because I
8 need to know a little bit about perhaps their social media
9 habits a little bit.

10 But, first, we start off with, as you know, the
11 first question, which is: What's the most important
12 characteristic for a juror?

13 And everybody will answer those questions. Now,
14 you've got very experienced attorneys that are local
15 attorneys, and they're used to doing this all the time, so
16 that's not a problem.

17 And that has several purposes. One, is to make
18 sure that we understand what the most important
19 characteristics are. It's also an abstract question so that
20 we can help assess the jurors' ability to deal with abstract
21 concepts, which is important because they have to apply the
22 law, and the law is abstract, typically. So we want to hear
23 that.

24 And then, of course, once they've answered those
25 questions, we'll ask them the next question -- that question,

1 and then we'll ask them the next question.

2 Now, y'all are familiar with that. Of course,
3 the next one is: What's an example of bias or prejudice?

4 And as you all know, we will got lots of
5 examples, and so we will see what they say. And then, of
6 course, we will ask them can they make a decision in the case
7 without being influenced by any unconstitutional factors,
8 biases or prejudices?

9 Well, anyway, you've all had a chance to go
10 through the material. You know what we ask. It's not a
11 mystery. I am just going to ask just to be sure, that
12 counsel from Texas doesn't have some question about it.

13 There are no objections during that portion.
14 There's no standing up and saying, Your Honor, I object, may
15 we approach the bench?

16 Because those questions will lead up to the
17 question of picking out the party -- the lawyers in the case.

18 And as you know, we'll ask them: Who do you
19 think is in the juror seats 1, 2, 3, and 4? First one is:
20 Who do you think is the lawyer for the party bringing the
21 claim?

22 And we'll say it might be a big truck case. It
23 might be whatever it is. It might be a criminal case,
24 whatever it is, who do you think it is and we'll see what
25 they say. Interesting.

1 And then we'll ask the second one: Who do you
2 think is the lawyer for the party defending the case?

3 By the way, will somebody be sitting with the
4 Government on this one, case agent?

5 MR. OLDHAM: The case agent will be in and out.
6 She is also handling some duties with witnesses when they do
7 arrive, Your Honor.

8 THE COURT: The case agent should be sitting
9 right there in Seat 3. I assume they will be; is that right?

10 MR. OLDHAM: Yes, Your Honor.

11 THE COURT: Okay. I'm looking for my case agent.
12 Where is the case agent?

13 MR. OLDHAM: She is -- witnesses who were not
14 here on time, she is preparing them, Your Honor.

15 THE COURT: She needs to be sitting right there.

16 MR. OLDHAM: Yes, Your Honor.

17 THE COURT: You know that. We do that every
18 case. The case agent is always here.

19 MR. OLDHAM: Yes, Your Honor.

20 THE COURT: Right? The case agent is always
21 here. So where -- they're on their way, right? They're
22 going to be here shortly?

23 MR. OLDHAM: Shortly, Your Honor.

24 THE COURT: How soon? Maybe better get them here
25 because -- are they in the building?

1 MR. OLDHAM: Yes, Your Honor, on the eighth
2 floor.

3 THE COURT: Okay. You've got to have them come
4 on up because, otherwise, it's not going to work quite right,
5 as you know. As you know that. And then if they need to be
6 excused later on, we'll do that. That's not a problem.
7 We'll take care of it. But we do need them here for this
8 portion because the jury is going to see that person sitting
9 there, and, you know, they'll need to know who they are and
10 so forth.

11 MR. OLDHAM: Yes, Your Honor.

12 THE COURT: All right. Mr. Palmer, you'll be
13 introducing your side at the appropriate time. That's not
14 going to happen for a while. And then there's somebody I
15 haven't really seen before, but he's sitting next to you.

16 MR. PALMER: I'm going to introduce you to
17 Mr. Levine.

18 MR. LEVINE: Good morning, Your Honor.

19 THE COURT: Mr. Levine, they left you out. He
20 didn't tell me who you were, but I figured that must be who
21 it was.

22 MR. LEVINE: Thank you, Your Honor. It is. Nice
23 to meet you.

24 THE COURT: Good to see you. Absolutely.
25 Absolutely.

1 Okay. We've got the team there. We've got
2 everybody.

3 Okay. How are we doing in terms of jurors? I
4 don't need it right now, but I just --

5 All right. Anything else that anybody needs to
6 know?

7 Yes, sir, Mr. Ballin, are you going to be here
8 the whole time?

9 MR. BALLIN: Yes, sir.

10 THE COURT: Okay.

11 MR. BALLIN: What are your plans as far as
12 statements, proof today? And the reason I ask you that, Dave
13 Brown and I are close friends, and he called me this morning
14 about the bad weather that's coming in. And I say that
15 seriously.

16 THE COURT: No, right, right.

17 MR. BALLIN: Four o'clock or so, we should be
18 getting some heavy rain and dangerous winds and just
19 certainly not -- certainly for us but the jurors getting
20 home.

21 THE COURT: We always stay until five unless
22 there's a reason to take a break earlier. That's a good
23 question, though. Great question. We'll explain that to
24 everybody.

25 Normally, in the trial, today, the jury will

1 probably -- prospective jurors will probably be brought up
2 about ten after nine or 9:15. One reason they're coming up a
3 little early is that there's a second case. Judge Fowlkes
4 has a case that starts today.

5 CASE MANAGER: Yes, sir.

6 THE COURT: And so they'll come up and they'll
7 bring our jury up. And then they'll have to have a little
8 time, and then they'll bring his juror to the ninth floor.
9 And so that's the schedule.

10 Now, we normally stay until right at -- right at
11 five or 5:10, something like that. I agree that weather is
12 always a factor, and so if we have a tornado, we will do
13 something else. But other than -- heavy rain is not going to
14 have any effect on us, unless they tell us we've got to
15 vacate the building.

16 And so our normal schedule is we'll start in here
17 every day very close to nine o'clock, probably a little
18 before or right at nine. The jury will come in, hopefully,
19 at nine.

20 Now, I'll be out here about 8:35, something like
21 that, 8:40. And, of course, that gives you a chance, you get
22 here and you get all set up. We will take a morning break.
23 Because we have a large number of panelists at this point,
24 the breaks have to be longer. So the break in the morning
25 will be at least 20 minutes. It may have to be a little

1 longer because we have a lot of panelists, potential jurors,
2 and then we'll take a lunch break.

3 I believe that this panel, Mr. Sample, has
4 actually lunch for them?

5 CASE MANAGER: That's correct. In 227, second
6 floor.

7 THE COURT: And they will be in 227, second
8 floor.

9 CASE MANAGER: They'll have it in by noon.

10 THE COURT: So that will be at noon. That
11 normally -- that break is usually -- once we're in trial,
12 usually about 50 minutes. It will probably be because of
13 that number of people, probably be an hour, at least an hour,
14 enough time for them to all have lunch. Of course, they will
15 leave and come back and so forth.

16 We will then have an afternoon break halfway
17 through. If people on the panel say they have to have a
18 break earlier, you know, we take a break earlier because
19 that's the deal.

20 The chance of getting a jury today is, you know,
21 maybe 50/50, and we'll get the jury today. Of starting the
22 case today is maybe 50/50. We will do really well if we get
23 through preliminary instructions and opening statements.
24 There's a remote possibility that we might get to the first
25 witness.

1 Who is our first witness going to be? I've got
2 your list.

3 MR. OLDHAM: Yes, Your Honor. It's Olivia
4 Johnson.

5 THE COURT: Sure.

6 MR. OLDHAM: And she is here and ready to
7 testify.

8 THE COURT: Okay. Well, and so, you know, you
9 can tell her that it would be unusual for us to get to her
10 before four o'clock and probably will be early tomorrow.

11 MR. OLDHAM: Yes, Your Honor.

12 THE COURT: And so you probably already told her,
13 I hope, right?

14 MR. OLDHAM: Your Honor, she's here, and we need
15 her here.

16 THE COURT: Right, right, right. That's fine.
17 We just want to make sure that people are not -- I'm going
18 to -- you know, I've been waiting here forever to testify.
19 The answer is, no, you're not waiting to testify. You know,
20 you won't be testifying until --

21 MR. OLDHAM: We're trying to avoid that as much
22 as we can, Your Honor --

23 THE COURT: -- the latter part of the afternoon.

24 MR. OLDHAM: -- where they arrive at the right
25 time, but the Court is not delayed.

1 THE COURT: Right, exactly. Exactly. And they
2 can come relax in the building. They just have to be
3 stressed out by having to be worried about that.

4 MR. OLDHAM: Yes, Your Honor.

5 THE COURT: Now, who is your case agent there?

6 MR. OLDHAM: This is Janell Hosafros, Your Honor.

7 AGENT HOSAFROS: Good morning, Judge.

8 THE COURT: Good morning. How are you doing?

9 AGENT HOSAFROS: Good. How are you?

10 THE COURT: They just asked me to have you spell
11 your first and last names.

12 AGENT HOSAFROS: Yes, sir. J-A-N-E-L-L-E. Last
13 name is H-O-S-A-F-R-O-S.

14 THE COURT: Okay. And where are you from?

15 AGENT HOSAFROS: I'm based in Memphis, Tennessee.

16 THE COURT: Okay. I just wanted to recheck that.
17 Absolutely.

18 AGENT HOSAFROS: Yes, sir.

19 THE COURT: Well, now, you didn't hear
20 everything, so we don't stand up when the panel comes in.
21 You don't say anything. Nobody acts like a -- that they can
22 approach the bench or anything like that. You wouldn't do
23 that anyway because that's not your job.

24 AGENT HOSAFROS: No, sir.

25 THE COURT: But, you know, just make sure that if

1 you're not sure what to do, ask the person sitting next to
2 you, and if they don't know what to do, he'll ask the person
3 sitting next to him.

4 AGENT HOSAFROS: Yes, sir. Thank you.

5 THE COURT: Good deal. Thank you. Okay. I
6 think we're good.

7 All right. That's it. If we're lucky, we will
8 get the jury fairly quickly, so I cannot tell you one way or
9 the other. I have no idea. And since there's only really
10 one count, now the verdict form will be divided.

11 And I know that Mr. Scholl would have insisted on
12 this. There will be two separate sheets. They're not going
13 to be on the same sheet because -- is that consistent with
14 how you're approaching the case?

15 MR. SCHOLL: Yes, Your Honor.

16 THE COURT: That's what I understood, and that's
17 what everybody understood, I believe. So that takes care of
18 that.

19 All right. Government all relaxed, ready, all
20 that sort of thing?

21 MR. OLDHAM: Your Honor, I can't speak to
22 relaxed, but we are ready, I think.

23 THE COURT: Yes, sir.

24 Yes, sir, Mr. Scholl?

25 MR. SCHOLL: Judge, we've, obviously, got ten

1 strikes. Is that going to be combined with both parties? Or
2 do we get ten a piece?

3 THE COURT: Normally, it is. Normally, it is.
4 So you have 10 -- oh, yes, we don't get -- you get 20.
5 Otherwise, we will never get out of here.

6 MR. SCHOLL: I think that would be great, Judge.

7 THE COURT: Well, we want to get out of here at
8 some point in our lives.

9 MR. SCHOLL: I want to get out of here, but I
10 would like my 20 strikes.

11 THE COURT: And you'll have a chance if you need
12 to consult some, or you can divide them half and half if you
13 want to. However you want to do that. In the -- you should
14 have strike sheets in front of you, do you?

15 MR. SCHOLL: We do.

16 THE COURT: Hopefully, you do. And so we will
17 take the -- it's a little more complicated when you have --
18 will this be one strike sheet being handed up or two? How
19 are you going to do that?

20 MR. SCHOLL: Judge, I think because we've got
21 everybody split up, I think we should do two strike sheets.

22 THE COURT: Okay.

23 MR. SCHOLL: One for each party, unless Your
24 Honor wishes us to put them all on the same one. That's
25 fine. I don't have a problem with that.

1 THE COURT: You know, it makes a difference in
2 terms of how you get to them sequentially. Because let's say
3 that -- let's say that Mr. Palmer had Juror No. and Seat No.
4 4, and then you had juror in Seat No. 4, we would -- and then
5 the Government had the juror in Seat No. 8. It doesn't
6 matter. You know, you have to remember that we've got to
7 keep them straight.

8 MR. SCHOLL: Judge, how about I'll consult with
9 Mr. Palmer?

10 THE COURT: Yeah.

11 MR. SCHOLL: If we have a difference on who we
12 want to strike --

13 THE COURT: You probably want to do that.

14 MR. SCHOLL: If we have a difference, then I will
15 submit my own. I just think --

16 THE COURT: Okay.

17 MR. SCHOLL: -- I will consult with Mr. Palmer
18 and see.

19 THE COURT: Are you thinking you can submit a
20 consolidated strike sheet, or what do you want to do?

21 MR. SCHOLL: The only thing -- I think we'll be
22 able to, Your Honor, but my only concern is if we have --

23 THE COURT: I don't want to put you lumped
24 together. That's what I'm worried about.

25 MR. SCHOLL: And my thing is that if we don't

1 agree on a juror that they want and we want them struck off,
2 then I'm obviously not going to consolidate onto Mr. Palmer's
3 sheet.

4 THE COURT: Right.

5 MR. SCHOLL: For purposes of if down the road,
6 there needs to be an appeal with regards to anything.

7 THE COURT: Okay.

8 MR. SCHOLL: I just think it's a cleaner
9 record-wise if we have our separate sheet, but I will consult
10 with Mr. Palmer so we're not repeating --

11 THE COURT: Sure. Let's talk about a way to do
12 that. The first thing I would do is take the first defense
13 strike. Now, I could take Mr. Palmer's first strike. Then I
14 could take the Government's first strike. Then I could take
15 your first strike. Then I -- in that sequence. And then we
16 would start over. And then I would take the Government's
17 second strike.

18 So that's the way to do that, so that you could
19 actually submit a separate sheet if you're going to use five.
20 I just don't know -- a lot of times people do consult, as you
21 know.

22 MR. SCHOLL: And I believe we will. And so --

23 THE COURT: If I'm getting one sheet, it's very
24 straightforward. I will take the defense first strike, then
25 the Government's first strike; the defense second strike and

1 the Government's second strike. And if there's an overlap,
2 and, of course, it's in that sequence, it's charged against
3 the party whose number came up first. And that's pretty
4 simple.

5 MR. SCHOLL: We can do that, Judge.

6 THE COURT: That might be a little bit --

7 Mr. Palmer, what do you think?

8 MR. PALMER: I agree. We'll work together on
9 that.

10 MR. SCHOLL: We'll talk about it. We've been
11 speaking, obviously, all through the case.

12 THE COURT: Right. I would expect you've been
13 talking to each other.

14 MR. SCHOLL: We can work well together, Your
15 Honor.

16 THE COURT: Okay. Are there any inconsistencies
17 in the defense in this case that might be a problem?

18 MR. SCHOLL: There are some -- well, not
19 inconsistencies on what happened, Your Honor, inconsistencies
20 on -- well, no. My client's role as far as what we're
21 alleging my client's involvement in anything as far as
22 different than what -- I think it's going to be --

23 THE COURT: You know what I'm thinking about is
24 we are able to stay together in the case in the trial.

25 MR. SCHOLL: I'm sorry, Judge?

1 THE COURT: We're able to be tried together.

2 MR. SCHOLL: Yes, yes, we are, Judge.

3 THE COURT: And there's no question about that.

4 Is that correct, Mr. Palmer?

5 MR. PALMER: Yes. I don't have a motion to
6 sever, Your Honor.

7 THE COURT: I just want to know right now,
8 because I -- you know, if it comes up during -- it's pretty
9 messy if it comes up later on. Nobody has filed a
10 preliminary motion. No one has asserted that there's a
11 problem. The Government has said that they -- has not said
12 that they need to try them separately, so I don't have any
13 indication of that. I want to be sure.

14 MR. SCHOLL: I understand.

15 MR. PALMER: I understand the question, and I
16 don't see -- our position requiring Mr. Grayson to be tried
17 separately, there's no issue from our perspective. If
18 Mr. Scholl sees it differently, then we --

19 THE COURT: Mr. Levine knows exactly what I'm
20 concerned about, right, Mr. Levine?

21 MR. LEVINE: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. LEVINE: I do.

24 THE COURT: We're okay on this?

25 MR. LEVINE: I do believe we're okay, Your Honor.

1 THE COURT: And, Mr. Scholl, obviously, you've
2 done this many times. Not a problem?

3 MR. SCHOLL: Not a problem, Judge. It's not
4 going to be something where separate trials are needed.

5 THE COURT: Okay. And you -- I'm just going to
6 ask the obvious question, that is: That's been thoroughly
7 discussed with your client then, is that right, Mr. Grayson?

8 MR. GRAYSON: Yes, Your Honor.

9 THE COURT: Okay.

10 And, Ms. Grayson, it's been thoroughly discussed
11 with you?

12 MS. GRAYSON: Yes, Your Honor.

13 THE COURT: Because we always have to make sure
14 that there's not an issue that would require a mandate that
15 there be separate trials, and you're well aware that that's
16 an issue the Court would address and would resolve it if we
17 needed to.

18 MS. GRAYSON: Yes, Your Honor.

19 THE COURT: Good deal. How are you feeling
20 today? Are you doing okay?

21 MS. GRAYSON: Yes.

22 THE COURT: All right. Good. Have you rested a
23 little bit?

24 MS. GRAYSON: Yes, as rested as I could get.

25 THE COURT: I know. I understand. We'll try to

1 move forward efficiently. It's better to do it that way.

2 Good deal. Thank you.

3 Yes, sir?

4 MR. BALLIN: May I? I'm not asking you to
5 revisit what you've told us about a total of ten strikes, but
6 if we could put on the record, Ms. Grayson's request that
7 each defendant get ten, because the defenses are separate. I
8 just wanted to note on the record --

9 THE COURT: No, I understand.

10 MR. BALLIN: -- my humble position.

11 THE COURT: I understand.

12 Well, let's hear from the Government on that. Do
13 you want to give them 20 strikes all together?

14 MR. OLDHAM: The Government would like to have
15 the total strike number, Your Honor, of ten divided, however
16 the Court sees fit, between the defendants.

17 THE COURT: I think what they're going to do, as
18 I understand it, is Mr. Scholl and Mr. Palmer are going to --
19 or I'm not leaving out Mr. Levine or Mr. Ballin -- are going
20 to consult and see if they can't submit a consolidated strike
21 sheet. Now, I won't know when they do that, which one uses
22 which strike, so there won't be a way for me to untie that
23 knot, but that's what their plan is. If they can't do that,
24 then they will have five strikes each, and then we would sort
25 them out the way that I've indicated. But I understand that

1 we'll have one strike sheet submitted. I think that's what
2 they have agreed to.

3 MR. OLDHAM: Yes, Your Honor.

4 THE COURT: Okay. And you're right. We should
5 only have the number that we have. Of course, everybody gets
6 unlimited strikes for cause, and that's not a problem.

7 All right. My goodness, it's getting late.
8 Okay. Where are we?

9 Yes, sir?

10 MR. SCHOLL: Judge, I -- just for the record, I
11 would join in. I think I was clear I would join in with
12 Mr. Ballin's objection that Your Honor has already ruled, but
13 I just would join in for the record.

14 THE COURT: Sure. Exactly. Exactly. Well,
15 that's fine. That's no problem at all.

16 Okay. We get a break until -- we're having --
17 we're resolving an issue on the second floor, and that may
18 take a few minutes because, apparently, we have one to
19 resolve. Nothing to do with the case, but we have, I think,
20 maybe we need to make sure we have everybody in place. And
21 everybody who is going to be here is here, so we have a
22 little bit of checking to do there. That may take a little
23 longer than I thought.

24 Okay. I think we're ready to almost get started.
25 Anything else from anybody else?

1 Ms. Grayson, are these people doing okay for you?
2 Are you unhappy with them? Do you want Mr. Ballin to move
3 somewhere else?

4 MS. GRAYSON: Yes, sir.

5 THE COURT: They're okay? The reason I check, it
6 does matter. You know, Ms. Grayson and Mr. Grayson, you are
7 the most important people in the courtroom in this matter,
8 and we have to -- well, I know it's -- they act like it's the
9 judge, but it's really not because this is not about me.
10 This is about your case, and I really am concerned if there
11 is a problem. I would count on you letting your counsel
12 know, and then they would let me know if there was a problem.
13 And if necessary, you would let me know directly.

14 That's pretty unusual. We really probably
15 wouldn't do that.

16 Mr. Grayson, are you doing okay?

17 MR. GRAYSON: Yes, Your Honor.

18 THE COURT: Okay. I think everybody is good.

19 Yes, sir? Was going to take that -- I have to
20 take a break until I get final word that everybody is ready
21 to come up.

22 MR. OLDHAM: Yes, Your Honor.

23 THE COURT: Good deal. All right. We'll take a
24 break at this time.

25 (A recess was taken from 9:07 a.m. to 9:34 a.m.)

1 THE COURT: The panel should be up fairly soon,
2 and we had an individual who had taken some medication and
3 just had a fainting spell, I think. So I think they're okay.
4 But they're also probably -- we would let you know if they
5 were going to be called. I think, probably, they will not be
6 able to -- may not be able to serve.

7 Okay. In connection with the PowerPoint from the
8 defense, there are two things, and I'm sure you've already
9 figured this out. And that is buying and selling food
10 stamps --

11 MR. PALMER: That's all out.

12 THE COURT: -- that's out.

13 And then where is the original video? That's
14 really argument. You may be able to say some of that, and --
15 but the Government has no objection, but that sounds -- just
16 sounds like an argument.

17 MR. PALMER: I can -- I'll rework that.

18 THE COURT: Probably just need to -- you know,
19 you can make that argument at the closing argument.

20 Now, the second thing is when I went over these
21 originally, I thought these are -- United States, for
22 example, you've timed it, you can get through all this stuff
23 that fast?

24 MR. OLDHAM: Yes, Your Honor.

25 THE COURT: Okay. Just wanted to ask because

1 it's a lot of material. I will hold everybody to a timeline.
2 You know, there's just a lot of material. Okay. And same
3 thing for the defense.

4 All right. We'll just be at ease for a moment,
5 but I've got to sort of get situated.

6 MR. BALLIN: Ask a couple of questions?

7 THE COURT: Always. Sure.

8 MR. BALLIN: Are we allowed to back strike?

9 THE COURT: No, no, no, no, no.

10 MR. BALLIN: Please?

11 THE COURT: No, never.

12 MR. BALLIN: Okay.

13 THE COURT: Do they let them do that in state
14 court now?

15 MR. BALLIN: Depends on which court you're in.

16 THE COURT: Well, back strikes are inappropriate,
17 generally, because that juror has been accepted as a member
18 of the jury. And there are rare occasions when something
19 comes up after the fact that nobody knew, and no one had the
20 opportunity to inquire about. And that sometimes results in
21 a cause strike, but it's not a back strike, so that would
22 be -- that would be very different. So we really don't have
23 back strikes.

24 MR. BALLIN: Yes, sir.

25 THE COURT: Good deal.

1 MR. BALLIN: What are your plans about
2 alternates?

3 THE COURT: We'll seat two alternates. Good
4 question. I think we disclosed that to everybody earlier.
5 At least two, but it's a short trial, so two should be
6 plenty.

7 The alternates will sit in the jury room as they
8 deliberate but will be told not to deliberate. They're just
9 going to be sitting there, and then if someone has to be
10 excused, that will allow us to use the alternate to place the
11 alternate on the panel, unless somebody has a problem with
12 that.

13 The issue about having an alternate and not doing
14 it that way is that you have a juror who has a sudden health
15 issue, you have a juror who, for some reason, must leave,
16 then you have not been able to complete your trial. So it
17 will be unusual for us to have to, at that point, have an
18 alternate sit in, but I think that's a way to make that work
19 if we had to.

20 Any problem with the Government in that --
21 handling it that way?

22 MR. OLDHAM: No, Your Honor.

23 THE COURT: They will just be told they can't
24 deliberate. They're just sitting there. So that if they do
25 have to deliberate, they're prepared to do so.

1 MR. BALLIN: And will we each get one strike per
2 alternate each? Will the defense get one strike per
3 alternate?

4 THE COURT: Not typically. I have not been doing
5 that, but I can do that. If you both want one strike, both
6 sides -- both sides want one strike per alternate, that's
7 okay. It'll just make it a little longer.

8 MR. BALLIN: We would ask for that one strike per
9 alternate consistent with the Court's earlier ruling that the
10 defense doesn't get to double up. Our request would be that
11 each defendant get one strike per alternate. But I
12 understand your ruling.

13 THE COURT: I think we've already dealt with
14 that.

15 MR. BALLIN: Yes.

16 THE COURT: But we will let you have one strike
17 at that time when we get to the alternates, and the
18 Government one also, and it should be -- that's usually very
19 quick. Usually, it's not very complicated on the alternates,
20 but we'll see if they could deliberate.

21 All right. Do we have -- what's our situation?
22 Are we about ready?

23 CASE MANAGER: Just waiting for them. Yes, sir,
24 waiting.

25 THE COURT: Okay. Remember, what are you going

1 to do when the jury comes in? Nothing. You're going to stay
2 seated. You're not going to get up.

3 Are you going to come and ask me questions or say
4 can we approach? Absolutely not. We'll get through that
5 whole first 45 minutes to a half hour -- to an hour, 45
6 minutes to an hour before we do that.

7 That does not mean you cannot raise objections at
8 an appropriate time. It just means that's not an appropriate
9 time. We can handle them either earlier or later, but we
10 won't be doing it right then. I think everybody understands
11 how that works.

12 MR. OLDHAM: Yes, Your Honor.

13 THE COURT: All right. Are you going to let your
14 sidekick do anything in this case?

15 MR. OLDHAM: Your Honor, he's done most of
16 everything already, so now it's just time for us to try to
17 figure out how to split things up, Judge.

18 THE COURT: Okay.

19 MR. PALMER: Your Honor, may I ask one question?
20 I would like to see if Amanda Fields can be excused from the
21 rules since she's our expert witness so she can sit during
22 the trial.

23 THE COURT: Sure, sure. Not a problem.

24 MR. BALLIN: And, Judge, we would ask for the
25 rule of sequestration.

1 MR. SCHOLL: Yes.

2 THE COURT: Well, expert witnesses normally do
3 not sit there. They normally sit in the gallery, but we're
4 not there yet. We're not there yet, and I know you know that
5 too, so, sure.

6 MR. SCHOLL: Judge, if I may ask --

7 THE COURT: Sure.

8 MR. SCHOLL: -- Mr. Sample, are we already on
9 mike-wise?

10 THE COURT: I think your mike might not be on.
11 We'll check the battery. We are going to have everybody --

12 MR. SCHOLL: Hello.

13 THE COURT: That one may not be working. Also
14 there's a little slide button on there, and just check yours
15 and make sure they're working.

16 MR. SCHOLL: Mine is not coming on, Judge.

17 THE COURT: Yeah, that means we've got a dead
18 battery.

19 MR. BALLIN: I seem to have broken mine as well.

20 THE COURT: We'll get them all taken care of by
21 the time you have an opportunity to say anything.

22 MR. OLDHAM: Your Honor, I taught him how to turn
23 it on, and so the sound is working.

24 THE COURT: Does it work now?

25 MR. OLDHAM: Yes, Your Honor.

1 THE COURT: That's amazing.

2 MR. OLDHAM: You need to turn it on, Judge.

3 THE COURT: If you don't turn it on, it won't
4 work. It's like plugging in something.

5 MR. SCHOLL: Everything has changed, Judge. I
6 don't dial one for long distance anymore.

7 So it's just, Madam Court Reporter, can you hear
8 me okay?

9 THE REPORTER: Yes, sir, I can.

10 MR. SCHOLL: Great. Thank you.

11 We're not on the record, so I won't comment to
12 Mr. Oldham.

13 (A recess was taken from 9:41 a.m. to 9:49 a.m.)

14 THE COURT: All right. We're ready to bring our
15 panel in. And, of course, everybody will remain seated, and
16 we'll go through this process.

17 (Prospective jury panel in.)

18 THE COURT: Welcome, everybody, to the United
19 States District Court for the Western District of Tennessee.
20 I'm Judge McCalla. As a point of interest, that's me right
21 up there. If I don't look like that, it's not my fault. We
22 don't worry about that.

23 We're going to be selecting a jury today, and I
24 will be asking a series of questions in that process. You're
25 an anonymous jury, that's not unusual. That just means that

1 you have the benefit of not having to be identified by
2 anybody. We do have information about you, but that's not
3 anything to be concerned about. But it does mean that you
4 have to know your number, right? Everything got their
5 number? Everybody is good on that?

6 And so you'll be called by number. The first
7 person whose number is called will sit in Seat No. 1. Now,
8 it doesn't have a 1 on it, but it's the seat closest to me on
9 the first row, all the way down to Seat 7, which is the seat
10 closest to you on the first row. And then the eighth person
11 will sit in the first seat on the second row, all the way
12 down to Seat 14.

13 The fact that your name is not initially called
14 has really very little bearing on whether or not you'll be on
15 the jury, but we do ask the first 14 individuals a series of
16 questions. You need to listen carefully to the questions
17 that are asked and the answers that are given because this is
18 a process, and we build on that process in order to know how
19 to answer the questions that are posed to you. When you're
20 called as a potential juror, you need to know what has been
21 previously said, generally. You need to understand what's
22 been previously said. And I may ask a couple of questions to
23 help you along in that regard.

24 So we're going to start in just a minute, but we
25 can't do anything until we swear you in. So if you'll stand

1 and raise your right hand, you'll be sworn in as the
2 potential jury in this case.

3 (Prospective jury panel sworn.)

4 THE COURT: All right. You may be seated.
5 Again, we're going to call you by number, and I think we're
6 now ready to proceed in that regard.

7 CASE MANAGER: Juror No. 0008, Juror No. 0010,
8 Juror No. 0058, Juror No. 0070, Juror No. 0009, Juror No.
9 0042, Juror No. 0011, Juror No. 0053, Juror No. 0001, Juror
10 No. 0028, Juror No. 0051, Juror No. 0051, 51, Juror No. 0066,
11 Juror No. 0018, Juror No. 0029.

12 THE COURT: All right. I can assure you that to
13 us, you're not just a number. You're a real person. The
14 purpose of anonymous jurors is something that's handled in
15 many places. It's most common in Kentucky where it's done in
16 some places, literally, all the time. It's so that you feel
17 free to exercise the function of a juror, not for any other
18 purpose. So we don't want to show any disrespect by not
19 using your names. It's just for that purpose, so that no one
20 feels, in any way, that they need to do anything other than
21 what jurors need to do.

22 Now, we're going to start with that voir dire
23 question and the advantage is you've had that question up
24 there forever, so you know what it is.

25 What do you think we're going to ask everybody in

1 this 14 group? That question.

2 But everybody out there needs to listen to the
3 answers. It's a building process.

4 So we're going to go through the process of
5 building a series of responses that help us be jurors as the
6 Constitution requires.

7 What do you think is the most important
8 characteristic for a person who is going to serve on a jury?

9 And, you know, I hate to do this, but it's kind
10 of like, okay, juror in Seat No. 1: What do you think is the
11 most important characteristic for somebody?

12 PROSPECTIVE JUROR: No pressure going first.
13 Having critical-thinking skills.

14 THE COURT: Having critical-thinking skills.
15 Very good. I'm going to -- okay.

16 All right. And juror in Seat No. 2?

17 PROSPECTIVE JUROR: I think to understand and
18 retain the information -- evidence presented and be able to
19 critically think on that as well.

20 THE COURT: Okay. And that is understand the
21 evidence presented.

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: So I'm just going to make it short
24 there.

25 PROSPECTIVE JUROR: Sure.

1 THE COURT: Okay. Juror in Seat 3?

2 PROSPECTIVE JUROR: Being nonjudgmental.

3 THE COURT: That's an interesting idea.

4 Nonjudgmental.

5 PROSPECTIVE JUROR: Based upon kind of how they
6 look or --

7 THE COURT: Okay. Not being influenced by an
8 inappropriate factor. Can we say it that way?

9 PROSPECTIVE JUROR: Sure.

10 THE COURT: Because, obviously, jurors have to
11 make decisions, but -- but --

12 PROSPECTIVE JUROR: Yes, not judging based upon
13 looks or anything like that, without the facts.

14 THE COURT: Not judging based on -- you just --
15 I'm going to put down, based on appearance. Okay.

16 All right. Juror in Seat 4, what is the most
17 important characteristic for somebody that's going to serve
18 on a jury?

19 There are a lot of things that can go on this
20 list.

21 PROSPECTIVE JUROR: Being able to make good
22 decisions. I guess that's kind of like what the first person
23 said.

24 THE COURT: That's true. That's true. Being --
25 and that's -- and you're saying being able to make a

1 decision, good decision, obviously, one. So that's
2 important.

3 All right. Juror in Seat 5?

4 PROSPECTIVE JUROR: Attentiveness.

5 THE COURT: Absolutely. Attentiveness,
6 absolutely. I like these short ones. They're easier.

7 All right. Juror in Seat 6?

8 PROSPECTIVE JUROR: Being open minded.

9 THE COURT: Being open minded, absolutely.

10 Juror in Seat 7?

11 PROSPECTIVE JUROR: That's the same thing I was
12 going to say. The exactly same thing, open minded.

13 THE COURT: Well, everybody has to think of
14 something new, so -- and there are lots of things that we
15 want. For example, you had to wait a little while
16 downstairs. We were waiting up here. So you need to be
17 what? If you have to wait, you need to be patient? How is
18 that going to work? Patient. Is that okay?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Because that's really important. I
21 mean, that sounds like an odd thing to say, but patience is a
22 virtue in this circumstance. I'm going to put down, patient.

23 Okay. Now, we're going to go down to Seat 8.
24 It's Juror 053. Boy, that sounds pretty tough there, 053.
25 It's probably somebody's number on their basketball jersey.

1 I don't know.

2 PROSPECTIVE JUROR: I think you should be able
3 to -- or should I say not be able to judge a book by their
4 cover.

5 THE COURT: Well, that's true. Let's see. Well,
6 that's true. You should not do that. That's sort of a
7 negative characteristic, but we don't want to do that.
8 Absolutely. Not judge something by his cover. Okay. I'm
9 getting the feeling some of you have been to my website. I'm
10 getting nervous here.

11 Okay. All right. Juror in Seat 9?

12 PROSPECTIVE JUROR: I'm going to say staying calm
13 and keeping your emotions in check in intense situations.

14 THE COURT: Okay. Stay calm. That's always a
15 good idea. And I suppose it's -- keep emotions in check.
16 That's an interesting one. It's always a good idea. You
17 have the longest set of answers of anybody that I've had in a
18 while, so this is interesting.

19 Juror in Seat 10? What do you think is the most
20 important characteristic for a person who is going to serve
21 on a jury?

22 We've still got some we've got to get on that
23 list.

24 PROSPECTIVE JUROR: I'll keep my short.
25 Listening skills.

1 THE COURT: Well, you have to have good listening
2 skills, absolutely.

3 And juror in Seat 11?

4 PROSPECTIVE JUROR: I would say to be impartial.

5 THE COURT: We'll go with that. Impartial.

6 Okay. And juror in Seat 12, that's 066. I don't
7 know, people might pay not to have that number. It's a
8 pretty good number, though.

9 PROSPECTIVE JUROR: I'm okay. Being able to
10 listen and weigh out all the evidence.

11 THE COURT: Okay. And we kind of got a couple of
12 listening ones, and I'm down to my last three, so I have to
13 make sure we've covered the last couple of things. What else
14 would you add to that? Absolutely. Have to be able to
15 listen, have to be able to pay close attention. Very
16 important. What else? We want a jury to be --

17 PROSPECTIVE JUROR: To be -- to be honest.

18 THE COURT: Honest, honest. That's number one on
19 my list over here. Honest. Honest, absolutely.

20 And juror in Seat 13?

21 PROSPECTIVE JUROR: It's a long answer kind of.

22 But, basically, independent thought, work well with the team,
23 but also not be swayed by what everybody else --

24 THE COURT: Okay. To think independently.

25 Nothing wrong with that at all. Decide a matter for

1 yourself, and then think as it applies to everybody.

2 Okay. Juror in Seat 14, I have a bunch we didn't
3 necessarily get.

4 PROSPECTIVE JUROR: Why don't you just tell me?

5 THE COURT: Oh, no. No, no, no, no, no. There
6 are lots of good characteristics. There really are. We want
7 jurors to be a lot of things. You know, I want them to be on
8 time. That's one. That's, you know, mindful of how time
9 affects everybody else. We want -- patience is the one we
10 talked about. That's a big one.

11 But what would you add to that? What
12 characteristic would you want on -- in a juror in any case?
13 It could be lots of things.

14 PROSPECTIVE JUROR: The phrase that came to me
15 was to overall use common sense.

16 THE COURT: Okay. And willing to use their
17 common sense. Now, we know you have to follow the law, but
18 we also know that that also includes using common sense.

19 Okay. Well, that's a good list, and there are
20 always things we could add. You know, but one of the things
21 that was mentioned here was that in Seat 11, it said
22 impartial. Now, all these are important, but the
23 Constitution requires that a jury be impartial, not biased or
24 prejudiced. We need to be all the other things. Nothing
25 wrong with that, but you have to be impartial. The Bill of

1 Rights and the Constitution are going to require that.

2 So now we're going to ask another set of
3 questions, handing it back, of course, to Seat 1, which is a
4 great thing to be in Seat 1 until you get a little further
5 along. Let's make sure we're on here. It helps if you push
6 that little button.

7 Okay. A jury is required to be impartial, not
8 biased or prejudiced. What is an example of a characteristic
9 as to which people sometimes have a bias or prejudice?

10 Now, we're, again, going to build a list, and
11 this needs to be -- I think y'all know that there are
12 probably lots of things that fall in this category. Seat 1
13 always gets to answer the question, typically, first.

14 So what is an example of a characteristic as to
15 which people sometimes have a bias or prejudice?

16 PROSPECTIVE JUROR: Something that's outside of
17 the norms of their religious beliefs.

18 THE COURT: Okay. That's a great point. I need
19 to figure out a way to say that in less than that many words.
20 Outside -- okay. Outside the norms of somebody's religious
21 beliefs.

22 So if your religion -- your religious belief says
23 this, what if it's different? What if the response is
24 different? And I might be so predisposed that I couldn't get
25 past that. So no predisposition in connection with religion.

1 I'm going to make -- I'm going to shorten it a little bit to
2 that.

3 Okay. Juror in Seat 2? Well, what about that?

4 PROSPECTIVE JUROR: I would say economically,
5 whether income level for an individual or perhaps how much
6 money a corporation makes or anything like that, so . . .

7 THE COURT: Okay. So economics, people are
8 biased and prejudiced by economics. And that can work -- can
9 that work both ways? I mean, you know, we can say they've
10 got a whole lot of money, or they don't have any money. I
11 mean, that could be a bias or prejudice. That's just simply
12 not a factor in a case, typically, in a case. So, economics.
13 May I call that socio economic?

14 PROSPECTIVE JUROR: Sure. Absolutely.

15 THE COURT: Okay.

16 All right. Juror in Seat 3?

17 PROSPECTIVE JUROR: I would --

18 THE COURT: Things as to which people sometimes
19 have a bias or prejudice?

20 PROSPECTIVE JUROR: I would just say past
21 situations, past things that have happened.

22 THE COURT: Okay. Now, tell me what you mean by
23 that because I think what you're saying is a personal -- of
24 the person who is making the decision, their past
25 experiences. So I'm going to shorten it to past experiences.

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: Okay. In fact, that may be one of
3 the most frequent things that influences us.

4 All right. Juror in Seat 4, things as to which
5 people may have a bias or prejudice?

6 PROSPECTIVE JUROR: The first thing that came to
7 mind for me was stupidity.

8 THE COURT: I don't know how you -- that's an
9 interesting one.

10 PROSPECTIVE JUROR: It just -- that's a --

11 THE COURT: Do people wear a sign and say I'm
12 whatever? I don't know. I think there's a way to say --
13 let's see, bias or prejudice based on -- may I say it this
14 way, intellectual level? Is that okay? It sounds a little
15 kinder.

16 Okay. And we -- that's a great point, though,
17 because have y'all seen the advertisements in which they have
18 someone who has -- I want to be very respectful, Down
19 Syndrome? And there -- you know, we have to remember that
20 everybody is human, and so we don't want to make a judgment
21 based on any of those characteristics, and we really want to
22 be mindful of that.

23 So I'm going to call it intellectual disability.
24 There may be many ways to say that. I'm going to write down
25 what you said because that's interesting. Okay.

1 All right. Juror in Seat 6, things as to
2 which -- characteristics as to which people sometimes have a
3 bias or prejudice? There are a lot of these, and we need to
4 get a -- I've got a whole list over here.

5 PROSPECTIVE JUROR: Political beliefs.

6 THE COURT: Well, yes, and that's true. Although
7 in court, and certainly in federal court, we kind of don't
8 talk about it because of our -- what we do. But exactly
9 right. So if someone says -- let's put it somebody says
10 they're a conservative or liberal, that's nonparty
11 identified, or socialist or whatever? And that could cause
12 us to have an image in our mind that could be inaccurate as
13 to that individual. So I've got that one down.

14 And Juror in Seat 7?

15 PROSPECTIVE JUROR: Race or ethnicity.

16 THE COURT: Absolutely. And I missed there
17 because it was actually juror in Seat 6. So I've got you
18 there. I'm sorry, say again, please.

19 PROSPECTIVE JUROR: Race.

20 THE COURT: Race or ethnicity, absolutely. You
21 covered two, and somebody is going to regret that when we get
22 to juror in Seat 14. He's going to say, I was going to say
23 that.

24 Give an example of ethnicity, juror in Seat 6.

25 PROSPECTIVE JUROR: Indian or African American.

1 THE COURT: And we think of it probably more as a
2 cultural thing often. So let's say somebody is from Mumbai,
3 which is in the north -- is it in the north? Kind of the
4 northwest part of India, and they have particular traditions,
5 religions, et cetera, and so we might -- if someone is
6 wearing a saree, we might respond negatively, but we
7 shouldn't, right? Is that okay?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: It seems like a decent one, and we
10 want to think about.

11 Okay. Juror in Seat 7? So I may have skipped
12 one, here and there, so, yes.

13 PROSPECTIVE JUROR: Age or gender.

14 THE COURT: Right. And I tell you, juror in Seat
15 14 is already about ready to come over, hey, you keep taking
16 everything up. That's two at a time.

17 But, certainly, give an example of how gender is
18 sometimes -- there's a situation for bias and prejudice as to
19 gender.

20 I always ask the question: How many -- how many
21 female basketball coaches will be coaching in the final four
22 of the men's tournament? I think we can get that answer.
23 The answer is, right now, it doesn't look like any. Does
24 that mean they couldn't use a female coach? They probably
25 could, but there's a -- sometimes perhaps a predisposition

1 there to not have a female coach, no matter how qualified.

2 So we've got a whole list of -- and that's a case
3 where -- then we can go through a lot of things. Is that
4 right? I mean, the gender bias is something we don't want to
5 have, right?

6 PROSPECTIVE JUROR: Right.

7 THE COURT: Absolutely. Absolutely.

8 Let's go to Seat No. 8. Characteristics as to
9 which people sometimes have a bias or prejudice? They keep
10 using up multiple ones so we're going to -- yes, sir.

11 PROSPECTIVE JUROR: Sexual orientation.

12 THE COURT: Sexual orientation. That's an easy
13 one. That's absolutely. Okay. And there's -- there can be
14 a lot of bias and prejudice there. Absolutely.

15 And then juror in Seat No. 9. Characteristics as
16 to which people may have a bias or a prejudice.

17 PROSPECTIVE JUROR: He just took exactly what I
18 was thinking.

19 THE COURT: You what I'm saying, it's just
20 amazing.

21 PROSPECTIVE JUROR: Your presentation as far as
22 your clothing, the way you're wearing your stuff.

23 THE COURT: Okay. That's a great point there.
24 And that is what you wear. And how does that influence us?
25 I always say think about the movie -- y'all are too young to

1 know this. *Pretty Woman*, remember? Some of you remember
2 that. Okay. Right. What does she do when she goes into the
3 expensive shop? Remember what happens? You're too young to
4 remember that, right? What happens when she goes -- I'm just
5 kidding you.

6 When she goes into that shop, and she's dressed
7 in a particular way, how is she treated? Very, very -- not
8 very well. Not very well. You can't afford this, you need
9 to leave. And yet she comes back later with somebody with a
10 big checkbook and things sort of change. Absolutely. What
11 you wear.

12 Okay. But it can be a source of a lot of
13 predisposition bias and prejudice.

14 All right. Juror in Seat 10?

15 PROSPECTIVE JUROR: They took my answers.

16 THE COURT: You know, it happens a lot around
17 here. Let's talk about things that really can cause some
18 really serious bias and prejudice, and that is -- that was a
19 good one on what we wear.

20 What's another thing that may appear -- that may
21 cause us to have a preconceived notion about that person that
22 might relate to an individual's appearance choices?

23 PROSPECTIVE JUROR: Just -- I mean, your body,
24 your -- I'm trying to think of the word and I can't because I
25 didn't think about it earlier.

1 THE COURT: Pull the mike a little closer. We're
2 really enjoying this.

3 PROSPECTIVE JUROR: Like *The Elephant Man*, the
4 appearance of their body, the deformation, the physical look.

5 THE COURT: Appearance of somebody's body,
6 absolutely. And what you're talking about is that famous
7 movie that's *The Elephant Man*, which was an individual, who
8 actually had a very serious medical condition, and it caused
9 him to look very different, very different, facially.

10 And prob- -- I don't -- that was the main thing
11 we noticed there. So it's the physical appearance of one's
12 face because we know facial identification is part of human
13 activity. So it's a little uncomfortable to have to talk
14 about that, but it's absolutely something we need to know.

15 All right. Juror in Seat 11?

16 PROSPECTIVE JUROR: Language or manner of
17 speaking.

18 THE COURT: Language, manner of speaking. Give
19 an example there.

20 PROSPECTIVE JUROR: Well, I mean, someone's
21 dialect or accent could cause someone to have a preconceived
22 notion.

23 THE COURT: Absolutely. Absolutely. And so when
24 you watch *My Cousin Vinny*, you've never seen that, have you?

25 PROSPECTIVE JUROR: (Moving head up and down.)

1 THE COURT: You've seen it? What's noticeable
2 about his accent? He has a Brooklyn accent, remember? And
3 is he treated initially differently? He is because he's got
4 this strong accent. How important -- that can really affect
5 what we think. Should that affect how we evaluate somebody's
6 evidence?

7 PROSPECTIVE JUROR: No.

8 THE COURT: No, but we have to be very mindful.
9 What's another -- I mean, there are other examples, many
10 examples where we have -- people have different accents, and
11 we just need to be very mindful of that.

12 Okay. Good. Well, juror in Seat 12. It's
13 always fun to be in the last three seats, isn't it?

14 PROSPECTIVE JUROR: Yes. The way they wear their
15 hair.

16 THE COURT: Great point. Well, that's not fair.

17 PROSPECTIVE JUROR: Your hair looks great.

18 THE COURT: But that's a great point. I
19 didn't -- yeah, the way a person wears their hair. Okay.
20 Absolutely.

21 Well, juror in Seat 12?

22 PROSPECTIVE JUROR: Tattoos and piercings.

23 THE COURT: Tattoos and piercings. You're
24 absolutely 100 percent right there.

25 PROSPECTIVE JUROR: Piercings is actually his

1 answer.

2 THE COURT: Well, he gets -- he has to clean up.
3 He's got to come up with a new one.

4 All right. Juror in Seat 14, things as to which
5 people that I have a bias or prejudice? They did a really
6 good job of using a bunch of them up. I realize that.

7 PROSPECTIVE JUROR: I was thinking maybe personal
8 quirks like stuttering or something like that.

9 THE COURT: Absolutely. Fantastic. And what's
10 the best example of that one that's so important? It's a
11 wonderful movie?

12 And do you remember *The King's Speech*? And
13 that's one in which, oh my goodness, I'm going to get it
14 wrong, George the VI? George the VI had a real impediment,
15 and his brother, who was his brother? His brother was the
16 king at the time. But with all due respect, fortunately not
17 the king when the war started. He could speak very well, so
18 he had to really work to overcome that. Great, great point.
19 And great, great movie, wonderful movie.

20 All right. Well, we've got a whole lot of things
21 that are -- things as to which a person might have a bias or
22 prejudice. Preconceived notions, things that cause us to
23 form an opinion or conclusion that is not based on fact.
24 Just simply based on something we should not use.

25 Well, the next question is always pretty much the

1 same one. We've got everything working here. Oh, my
2 goodness. Can you decide the case without being influenced
3 by any of these illegal, unconstitutional factors that have
4 just been listed?

5 And, of course, there can be more added to that
6 list, but can you do that? Now, we have to think about that.
7 That's not just a fun question to ask because we have to
8 think about it. Can I do that? Can I decide a case without
9 being influenced by any bias or prejudice or preconceived
10 notion?

11 Well, juror in Seat No. 1 always gets to start
12 out on this. Do you think you can do that?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right. Juror in Seat No. 2?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Juror in Seat No. 3?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. Juror in Seat No. 4?

19 PROSPECTIVE JUROR: Yeah.

20 THE COURT: Juror in Seat No. 5?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Juror in Seat No. 6?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. Jury in Seat No. 7?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay. Very enthusiastic group here.

2 Juror in Seat No. 8?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Juror in Seat No. 9?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: No. 10?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: No. 11? Don't hesitate to say, I'm
9 not sure. It's okay.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. All right. Seat No. 12?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. Seat 13?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Seat 14?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Now, everybody says that
18 they can do that, so let's go to the next process.

19 And that is we'll start in Seat 1. We have got a
20 lot of people sitting over there at the table. We've got 1,
21 2, 3, 4, 5, 6, 7, 8, 9. We've got nine people sitting over
22 there at the table. I'm going to ask you to look out there
23 and tell me who you think is the lawyer for the party
24 bringing the claim?

25 Now, could be a massive insurance case or it

1 could be a not so big insurance case. It could be a big
2 truck case where somebody was seriously injured. It could be
3 a criminal case. It could be any kind of case, but who do
4 you think is the attorney for the -- for the -- who is
5 bringing the claim, the lawyer for the party bringing the
6 claim?

7 Is it No. 1, No. 2 -- now, they have similar
8 haircuts -- 3, 4, 5, 6, 7, 8, 9, the attorney for the party
9 bringing the claim? It can be anybody out there. You've
10 got, again, 1, 2, 3, 4, 5, 6, 7, 8, 9.

11 I hope I got them in a sequence that's capable of
12 being followed. The gentleman with the beard over there is
13 No. 9. The gentleman with the haircut very similar to mine
14 is No. 1. So who is the attorney for the party bringing the
15 claim?

16 PROSPECTIVE JUROR: This is based off of looks?
17 I mean, just --

18 THE COURT: That looks like what we're doing.

19 PROSPECTIVE JUROR: Okay. I'm going to say No.
20 1.

21 THE COURT: No. 1. No. 1. Attorney for the
22 party bringing the claim. Okay.

23 Now, hand that over to juror in Seat No. 2.

24 Okay. Well, who is the attorney for the party
25 defending the claim? Is it 9, 8, 7, 6, 5, 4, 3, 2, 1, the

1 attorney defending the claim? The attorney -- and this is a
2 little complicated question, but the attorney defending the
3 claim?

4 PROSPECTIVE JUROR: It would be hard to judge
5 based on what's the case as to who the plaintiff is and who
6 is the defendant.

7 THE COURT: It is too.

8 PROSPECTIVE JUROR: It's -- if it's the -- you
9 know, like U.S. Government is the plaintiff, maybe down
10 there. So it's a -- maybe civil defense, somewhere over
11 there, maybe No. 2.

12 THE COURT: Okay. So this is -- we've got --
13 you're picking out No. 2?

14 PROSPECTIVE JUROR: Well, I was just saying it
15 depends on what the case is, if we're going by prejudice.

16 THE COURT: I'm not going to tell you.

17 PROSPECTIVE JUROR: Okay. Well, that's my
18 answer.

19 THE COURT: You're going to go with No. 2?

20 PROSPECTIVE JUROR: If it's like a criminal
21 defense, I think, or maybe, like, some kind of defense,
22 prosecution maybe for the state would be down that way.

23 THE COURT: I'm just going with any answer here.

24 PROSPECTIVE JUROR: Okay. Sure. We'll go with
25 2.

1 THE COURT: We're going with No. 2. No. 2.
2 Okay. Jury doesn't -- no one -- they want to see who you're
3 talking about over there. Okay. No. 2 is the attorney
4 defending claim.

5 Okay. Okay. Now, I'm going to tell you what
6 kind of case it is. I'm going to ask you to pick out who you
7 think is a defendant in the case.

8 This happens to be a criminal case brought by the
9 United States Government. I want you to pick out the person
10 that you think is a defendant in the case. It can be No. 9,
11 8, 7, 6, 5, 4, 3, 2, 1, but the defendant in the case, who do
12 you say that might be?

13 PROSPECTIVE JUROR: Number 3.

14 THE COURT: No. 3. No. 3.

15 All right. And now, I'm going to go to our juror
16 in Seat 4 and say, well, who do you think is the
17 representative of the United States who is not an attorney,
18 not a lawyer? Not a lawyer, representative of the United
19 States, can be anybody, 1, 2, 3, 4, 5, 6, 7, 8, 9, the one
20 who is not a lawyer?

21 PROSPECTIVE JUROR: Seven, maybe.

22 THE COURT: No. 7. No. 7.

23 All right. Well, let's see how we did. But
24 before we have them tell us who they are, I'm going to go to
25 juror in Seat 5 and ask you -- and they did exactly what I

1 asked them to do, right? They were good sports. What did we
2 do that was an incorrect method, an unreliable method?

3 PROSPECTIVE JUROR: Asked people to judge based
4 on appearance.

5 THE COURT: They had to make judgments based on
6 appearance. Do you think that's a good way to do something?

7 PROSPECTIVE JUROR: No.

8 THE COURT: No, it's not. But they were good
9 sports, and they did that. So now, we're going to have the
10 attorney for the United States, the lead counsel introduce
11 himself and those who are with him.

12 MR. OLDHAM: Thank you, Your Honor.

13 Good morning. My name is Neal Oldham. I'm an
14 Assistant United States Attorney. With me is co-counsel,
15 Bryce Phillips, who is also an Assistant United States
16 Attorney, and our representative of the Government, Special
17 Agent Janelle Hosafros from the Federal Bureau of
18 Investigation.

19 THE COURT: Okay.

20 MR. OLDHAM: Thank you, Judge.

21 THE COURT: Sure. Absolutely. I see y'all did
22 pretty well on guessing, but we'll see how this turns out.

23 All right. Well, I'm going to have lead counsel
24 for the first defendant introduce himself and those who are
25 with him.

1 MR. PALMER: Good morning. My name is Scott
2 Palmer, along with Michael Levine and Leslie Ballin. We
3 represent Ashley Grayson.

4 THE COURT: Ms. Grayson is here, and Ms. Grayson
5 happens to be a defendant in the case.

6 Thank you, Ms. Grayson.

7 Thank you, all.

8 And then, Mr. Scholl, I'm going to let you
9 introduce yourself and those who are with -- and the
10 individual who is with you.

11 MR. SCHOLL: Good morning, everyone. My name is
12 Michael Scholl. I'm by myself, so I don't have anyone else
13 to introduce. This is my -- stand up. This is Joshua
14 Grayson.

15 THE COURT: And that's Mr. Grayson. Okay.

16 Now, on the first one, we had that one wrong.
17 And then the attorney for the defendant, well, they didn't
18 get the lead counsel right, so they get half credit for that.
19 Lead counsel is Mr. Palmer, but -- so you get -- it's a half
20 credit, so you get half that right.

21 And then for -- for the defendant, they guessed
22 right. I'm a little concerned there. We'll talk about that.
23 So that was a correct. But there are two defendants, so they
24 only got one.

25 And then as to who was the representative, they

1 got that right. So we've got basically one wrong. One-half
2 right. I gave them credit on that. And then we got two
3 correct. So that's about a 65, something like that.

4 Now, is that the kind of reliability that we
5 would be comfortable with in putting the bolts in a Boeing
6 airplane? I'm going to go back to Juror 5 because she's got
7 an answer on this.

8 PROSPECTIVE JUROR: No.

9 THE COURT: In fact, that would be terrible if
10 you're putting the bolts in the door on the plane because
11 it's got to be what?

12 PROSPECTIVE JUROR: A hundred percent.

13 THE COURT: It's got to be a hundred percent. I
14 mean, if it's not, what happens to the door or the window?

15 PROSPECTIVE JUROR: It flies off.

16 THE COURT: Flies off. Not good. Not good
17 result.

18 In this case, I'm also going to ask in Juror No.
19 6, well, we picked out people through the exercise, what is
20 the lesson from the exercise? What's the lesson from the
21 exercise? We do this on -- very much on purpose, and we do
22 it with real people because it's really important to make
23 sure we ferret out certain things.

24 PROSPECTIVE JUROR: I feel like we've just judged
25 a book by its cover.

1 THE COURT: Right. Right. You don't -- and if
2 you want to know what's in the book, what have you got to do?

3 PROSPECTIVE JUROR: Take it and read it.

4 THE COURT: You have to read the book. And we
5 don't want to make an error, you know, at all, so we have to
6 read the book. How do we -- and how do we assure -- and it
7 turned out, that in this case, Ms. Grayson was picked out as
8 the defendant. Now, how do you think she feels right now?
9 How would you feel if you got picked out as a defendant?

10 Now, Mr. Grayson is probably down there saying,
11 oh, this is okay. But how do you feel? How do you feel
12 about that? How would she feel? Would you agree you'd
13 rather not be picked out?

14 PROSPECTIVE JUROR: Oh, yes, most definitely.

15 THE COURT: You would rather not be picked out.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: So what do we do as a jury to
18 reassure any person who is a defendant in any case? What do
19 we do? What do we tell that person, not directly, because
20 you're not going to be speaking to each other, but what do we
21 do? What do we say? How do we deal with this?

22 PROSPECTIVE JUROR: Just that I think we need to
23 know all the details of things before we make a decision.

24 THE COURT: Okay. I'm not going to make a
25 decision until I know what all the evidence is. I just

1 rephrased it slightly, but that's what you're telling me; is
2 that right?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. And what do we also say about
5 in the case if the Government fails to present evidence
6 that's -- to meet its burden of proof, which is beyond a
7 reasonable doubt? What do we say we're going to do if the
8 Government fails to meet its burden?

9 PROSPECTIVE JUROR: Find her not guilty.

10 THE COURT: We're going to find not guilty. Now,
11 what do we -- I'll tell Mr. Grayson too. We don't want to
12 leave anybody out here because they get separate -- they get
13 considered separately from every case. Does that apply to
14 everybody?

15 PROSPECTIVE JUROR: Yes, it should.

16 THE COURT: Can you do that in this case?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay.

19 Now, let's go to juror in Seat No. 7 and say,
20 okay, when -- did it make sense why we asked four jurors to
21 pick out people as part of an example of what we were doing?
22 Does that make sense? because we picked out real people in a
23 real case. We didn't pick out some theoretical thing. We
24 were asking about real folks. Does that make sense to you?

25 PROSPECTIVE JUROR: Well, you're just doing an

1 example, I guess, or whatever. We didn't know what the case
2 was about. They were just asked who would they pick. So it
3 was just an exercise.

4 THE COURT: You didn't know what the case was
5 about. Exactly. And we use -- we use -- we want things to
6 be contextually understandable. In other words, it's not
7 abstract, it's real. And we have to think about it in terms
8 of real context. Does that make sense? That's what I'm
9 hearing here. It's not just an exercise, it's a process of
10 how the jurors are going to need to think, right?

11 And if, again, the Government fails to prove its
12 case as to any defendant, either defendant, then as to that
13 defendant, what verdict would we have to return?

14 PROSPECTIVE JUROR: Not guilty.

15 THE COURT: Not guilty. Would you even hesitate
16 if that's the case?

17 PROSPECTIVE JUROR: No.

18 THE COURT: On the other hand, if the Government
19 does prove its case beyond a reasonable doubt as to a -- the
20 defendant that you're considering, and you consider them
21 separately, what verdict would you have to return? If the
22 Government proves beyond a reasonable doubt the facts
23 necessary to support its theory in the case, what verdict
24 would you have to return?

25 PROSPECTIVE JUROR: Guilty.

1 THE COURT: And would you even hesitate in that
2 regard or would you do what is required?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay. Exactly. Exactly.

5 Now, let's hand that back to juror in Seat No. 8.
6 So how do we decide a case?

7 We've asked this already a little indirectly:
8 How do we decide a case without being influenced by any
9 illegal factor? How do we do that? How does the jury do
10 that? because we really have to think about that. That's
11 really important. How do we decide a case without being
12 influenced by any illegal factor? Illegal or
13 unconstitutional.

14 PROSPECTIVE JUROR: I think we should decide the
15 case strictly by the facts that are presented to us. We
16 should weigh the pros and cons and be able to decipher what's
17 true and what's not true.

18 THE COURT: Decide the case strictly, as you
19 said, strictly on the facts, on the evidence.

20 PROSPECTIVE JUROR: The facts that are presented.

21 THE COURT: Strictly on the -- and in accordance
22 with the law, of course.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Now, can you do that in this case?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay.

2 Let's go to our juror in Seat No. 9. In everyday
3 life, people make quick decisions about many things, whether
4 it's going to the grocery store, whether it's getting cut off
5 in traffic, we make lots of decisions every day. That's an
6 individual decision.

7 Well, what makes a jury different in order to
8 achieve the objective that we all have here, which is to
9 decide the case solely on the evidence and the law? What
10 makes a jury able to do that when in everyday life, it's
11 probably harder? Maybe harder maybe not, but it's certainly
12 different. What makes a jury different?

13 And I'm going to ask jurors in your seat,
14 probably in three or four seats, a single factor that makes a
15 jury different, that makes a jury a reliable mechanism to
16 make the decision free from any bias and prejudice and based
17 solely on the evidence in the case? What enables a jury to
18 do that?

19 And if you don't mind, we're going to list maybe
20 one at a time because, otherwise, juror in Seat 12 is going
21 to be sitting there thinking, these people are not giving me
22 a chance. So we're not going to do that.

23 What makes a jury different and able to perform
24 its constitutional duty?

25 PROSPECTIVE JUROR: Am I able to say that it's

1 because we are different?

2 THE COURT: Okay. Okay. First one, absolutely,
3 yeah, the jury is diverse.

4 PROSPECTIVE JUROR: Yes, diverse.

5 THE COURT: Okay. And that helps. Okay.

6 And we're going to get the next one, okay, juries
7 are diverse.

8 And then juror in Seat 10, something else that
9 makes a jury able to perform it's duty.

10 PROSPECTIVE JUROR: Getting the facts from both
11 sides.

12 THE COURT: That's true. That's not exact --
13 that's true. You're going to make a decision based on
14 evidence and not on any first impression or anything else.
15 That's great. I think that's good. You're making a decision
16 based solely on the evidence.

17 All right. We've still got a couple of really
18 important things. What makes a jury different and enables
19 the jury to perform its constitutional duty, frankly, with
20 great regularity, if we think about it?

21 PROSPECTIVE JUROR: I would say because we're
22 given specific instructions to do that, and then that is our
23 duty.

24 THE COURT: Okay. There's instructions -- your
25 instructions under the law. And we're not required to do

1 that if we're going to the grocery store.

2 I may have to add a couple of more
3 characteristics here because I've got a couple we haven't
4 gotten to.

5 Well, juror in Seat 12, what makes a jury
6 different?

7 PROSPECTIVE JUROR: After listening to the
8 evidence, we're able to give an honest and sincere judgment.

9 THE COURT: Okay. And that's true, Absolutely.
10 I'm going to ask a little bit because I've kind of got --
11 okay.

12 Absolutely. You're going to rely on the
13 evidence, and you're not going to decide until the evidence
14 is all presented as opposed to the very beginning. So you're
15 going to wait, the jury has to wait and then decide -- and
16 I'm going to say, after deliberation with fellow jurors.
17 Okay.

18 Okay. Well, actually, we still have a few things
19 we didn't cover there, so what else makes a jury different?
20 And there are at least two more.

21 So, juror in Seat 13?

22 PROSPECTIVE JUROR: They're diverse, they're
23 peers.

24 THE COURT: Well, that's true, and we covered
25 that one, so you've got to come up with another one.

1 PROSPECTIVE JUROR: Okay. I was already thinking
2 of the deliberation.

3 THE COURT: What does the jury have to do that
4 you don't do when you're at the grocery store? You took a --

5 PROSPECTIVE JUROR: Well, they -- they stay away
6 from news, and they don't go looking for more information --

7 THE COURT: Right. That's actually a great
8 point. I mean, you decide the case based solely on the
9 evidence presented. That's a very good point.

10 Okay. Yes, you don't go on TV and check it out.
11 You don't go on your computer and check it out. That would
12 be really bad. You know, you don't go on websites. You
13 don't go to blogs. That's all out of the window. We can't
14 do that. Great point.

15 Well, they left you a whole bunch of things,
16 juror in Seat 14. What makes a jury different? Two big
17 things that we haven't talked about.

18 PROSPECTIVE JUROR: The one thing I can think of
19 was it comes from a randomly selected pool of people.

20 THE COURT: And that's the diverse question. But
21 what else is the juror going to have to do? You're going to
22 have to be sworn in. You're not sworn in at the grocery
23 store. Maybe you should be, but you're not. So you're going
24 to be sworn, so it's under oath. And it has -- the jury
25 verdict has to be what?

1 PROSPECTIVE JUROR: Unanimous.

2 THE COURT: Unanimous. Unanimous. Y'all came up
3 with a great list there. That was longer than most of them.
4 Absolutely.

5 Now, well, those are all important things. You
6 know, it's tough being in Seats 1, 2, 3, and 4, so I'm going
7 to ask you, all right, we're coming back to 1, 2, 3, and 4.
8 Usually, 1, 2, 3, and 4 want to tell us how they picked out
9 the people they picked out, and we have to ask: How do you
10 feel having heard people talk about the duty of a jury as to
11 the ability of the jury to carry out its function?

12 But then we'll go over that. So having heard all
13 of these things, tell us, though, you picked out No. 1 as the
14 attorney for the party bringing the claim. How did you do
15 that?

16 PROSPECTIVE JUROR: I actually thought it was the
17 one with the beard, but I thought that was also too obvious,
18 so I went with my second choice. It was one of the ones on
19 the end of the table.

20 THE COURT: Okay. I may have numbered those
21 wrong. Did they get that right on that one?

22 CASE MANAGER: I think so.

23 THE COURT: Oh, my goodness, they got a lot of
24 them right on this one.

25 PROSPECTIVE JUROR: No, I meant this one, but I

1 thought that that was the obvious choice.

2 THE COURT: You thought it was No. 9?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: But you went with the guy who looked
5 most like the judge, right? We appreciate that. We
6 appreciate that.

7 Okay. But did you feel uncomfortable when you
8 were asked to do that?

9 PROSPECTIVE JUROR: Very much so.

10 THE COURT: And I'm going to ask you why?

11 PROSPECTIVE JUROR: Because it's not a reliable
12 thing to -- I mean, it involves misogyny. It involves race.
13 It involves age.

14 THE COURT: It involves all those things that we
15 know we shouldn't do. And I know that I've asked jurors in
16 Seats 1, 2, 3, and 4 many, many times to do this. It's
17 right. It's an uncomfortable spot to be in.

18 In this case, can you decide the case now --
19 after hearing all this, do you feel more comfortable that you
20 can decide the case without being influenced by any
21 inappropriate factor: gender, race, nationality, anything at
22 all?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. All right. Now, I'm going to
25 ask juror in -- and I've got another set of questions, but

1 I'm going to ask juror in Seat No. 2, you got a half right --
2 you really kind of -- you know, you got a half right on
3 defense counsel because of shared haircut but not much. You
4 know, a little different there.

5 How did -- how do you pick out juror in seat --
6 in the seat in which you did -- I mean, the -- at the number
7 in terms of who was defense counsel? How did you do that?

8 PROSPECTIVE JUROR: I used to work for a law
9 firm, so I've had to deliver things up here. And I know
10 federal is usually over here, and over here, there's a lot of
11 people, defendants, and I recognized Mr. Ballin from the
12 news.

13 THE COURT: Oh, dear, we're in trouble already.

14 PROSPECTIVE JUROR: I didn't want to cheat with
15 that, so I went down here.

16 THE COURT: Well, is the fact that you recognized
17 some people over there going to influence you in --

18 PROSPECTIVE JUROR: No, sir --

19 THE COURT: -- in any decision you might make?

20 PROSPECTIVE JUROR: -- Your Honor.

21 THE COURT: I am going to ask what you did for
22 the law firm because that might matter.

23 PROSPECTIVE JUROR: I was just a runner, and I
24 did some IT work for them.

25 THE COURT: Okay. And I am going to secondly

1 ask: Did you go to court very much?

2 PROSPECTIVE JUROR: Well, I mean, to drop off
3 boxes in the morning for trials. This was 20 years ago
4 before there was a lot of electronic stuff, so bankers boxes,
5 I brought them up in the court.

6 THE COURT: Sure. That's when they used to bring
7 in all the boxes and stack them around the courtroom, and it
8 was --

9 PROSPECTIVE JUROR: Yes, sir. The more boxes,
10 the more impressive it was.

11 THE COURT: Oh, it was dependent on your point of
12 view, I suppose. Absolutely. You know, you can't use any of
13 that experience in deciding this case. I know you used it a
14 little bit in sorting things out here, but you can't do that.
15 Is that okay?

16 PROSPECTIVE JUROR: Yes, sir, Your Honor.

17 THE COURT: And if you bring up something like
18 that with your fellow jurors, what should they tell you?
19 Say, well, I was over in state court, and I heard the judge
20 say this, that, and the other, and that's really important.
21 If you said something like that, what should they say to you?

22 PROSPECTIVE JUROR: That's not relevant.

23 THE COURT: Not relevant. It's not from the
24 evidence in the case. We can't consider it at all. So you
25 wouldn't feel offended if they did that?

1 PROSPECTIVE JUROR: No. And I wouldn't say
2 anything like that to begin with.

3 THE COURT: Okay. I am going to ask you what you
4 do now.

5 PROSPECTIVE JUROR: That's a loaded question. I
6 was -- I'm a software developer, but I'm transitioning
7 positions, so I've taken some time off.

8 THE COURT: You're doing what everybody would
9 like to do, take a little break and --

10 PROSPECTIVE JUROR: Yes, sir, Your Honor, I'm
11 taking a sabbatical right now. I was overworked and
12 underpaid, so . . .

13 THE COURT: So that's exciting, a new transition
14 in life. Something new. Absolutely.

15 PROSPECTIVE JUROR: I lost 20 pounds.

16 THE COURT: Congratulations.

17 PROSPECTIVE JUROR: Thank you, Your Honor.

18 THE COURT: Exactly.

19 Now, we're going to hand it to juror in Seat No.
20 3. It's always tough to be in Seat No. 3 because we always
21 ask: Who do you think is the defendant in the case?

22 And in this case, you pick out somebody and how
23 did you that and how did you feel about it? First of all,
24 how did you -- did you feel uncomfortable? How did you feel?

25 PROSPECTIVE JUROR: Yeah, I thought that was a

1 terrible thing to ask me.

2 THE COURT: It is a tough one. We know Seat No.
3 3 is a tough one.

4 PROSPECTIVE JUROR: Yeah. I didn't -- I mean, I
5 guessed upon what was in front of her, and there's not really
6 anything in front of her. And the rest of them were all --
7 there's either big notebooks. They were writing. There's
8 computers. I can't see the guy that's to the left. I can't
9 see what's in front of him, but there is a big screen in
10 front of him. I didn't know if that was him or what that had
11 to do with. So -- yeah.

12 So it really had to do that all she had was a
13 yellow pad, and she hasn't written anything down, and she
14 hasn't been taking notes where the rest of them have all been
15 taking notes, writing things. Even the defendant down at the
16 end, he's got a lot of notebooks in front of him, so I
17 assumed he was -- I thought they were all her team.

18 THE COURT: Oh, I see. You thought it was the
19 whole team.

20 PROSPECTIVE JUROR: I thought she had five people
21 representing her because he has so much stuff in front of
22 him, and he's busily writing.

23 THE COURT: You went on the little piece of
24 information you had, which is how much do they have in front
25 of them, and who looks like that they're participating versus

1 observing.

2 PROSPECTIVE JUROR: Yes. And the rest of them
3 look like, honestly, they're judging me. They're looking at
4 all of us, and they're writing notes, and they're judging,
5 and she's just sitting there.

6 THE COURT: Okay. Okay. And -- but what would
7 you say to --

8 PROSPECTIVE JUROR: That had nothing to do with
9 her looks or her race or anything else.

10 THE COURT: I understand.

11 PROSPECTIVE JUROR: It had to do with --

12 THE COURT: The books and the papers and so
13 forth.

14 PROSPECTIVE JUROR: And the lack of, yeah.

15 THE COURT: Well, but I know that you -- what
16 would you say to Ms. Grayson about -- or anything else who
17 is -- you know, obviously, Mr. Grayson, too, since he's here.
18 But in order to assure Ms. Grayson that you can be completely
19 fair and impartial in this case, what would you tell anybody
20 in her position? because she needs to know, hey, this person
21 is going to be fair. They're going to be impartial. They're
22 going to decide the case only the way in which they're
23 allowed to decide it. What would you say?

24 PROSPECTIVE JUROR: Yeah, I mean, I'm sorry that
25 I chose you. Really, it's the judge made me choose you. We

1 have to answer what he says, so I would have loved to have
2 passed the mike to her. I said it very quickly because I
3 wanted to move on, but, again, it had nothing to do with, you
4 look very pretty, very nice, your hair looks nice, and your
5 clothing. So it had nothing to do with that.

6 I just would say in the future, great job to you
7 having 9,000 things in front of you to look like you're a
8 lawyer, so good job on that. And then over here, y'all, too,
9 also looked like you got a lot of stuff going on. I can't
10 see her either, so I didn't know what was in front of her,
11 so . . .

12 THE COURT: Okay. And so the question always is:
13 Can you assure everyone, including Ms. Grayson, that you will
14 decide the case solely on the evidence and the law in this
15 case and on no other basis?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. Now, you want to tell them
18 what you do because this is going to be interesting to
19 everybody?

20 PROSPECTIVE JUROR: Yes. I'm a co-founder and
21 executive director of a nonprofit.

22 THE COURT: Right. And how long have you been in
23 that position?

24 PROSPECTIVE JUROR: So we started it because my
25 son passed away. So he passed away about 16 and a half years

1 ago, and so we started it when he passed away. So it's been
2 going about 16 and a half years.

3 THE COURT: And there were many people who knew
4 about that at the time; is that a fair statement?

5 PROSPECTIVE JUROR: Yes, lots.

6 THE COURT: All right. And how has it been going
7 in terms of running the nonprofit?

8 PROSPECTIVE JUROR: Great. I mean, it's really
9 hard to run a nonprofit but, yeah, good. We've expanded.
10 We're all across the mid South. We have offices in numerous
11 cities, but our home base is here in Memphis.

12 THE COURT: Can we talk briefly at side-bar? Is
13 that okay? This is going to be a chance to talk very briefly
14 on one issue at side-bar. Is that okay? Can you come
15 around?

16 And this is an example when you come to the
17 side-bar, there's a background noise that comes on, and so
18 you -- everybody else, you won't be able to hear out there.
19 But I do need to ask a question, if that's okay. If you
20 don't mind coming around here.

21 (At side-bar on the record.)

22 THE COURT: That's probably fairly well known.
23 There's a lot of people. And I am going to ask you, first of
24 all, are you doing okay?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And I hate to bring that up.

2 PROSPECTIVE JUROR: Yeah.

3 THE COURT: I think we probably needed to ask
4 folks. And do you mind telling them how your son passed
5 away?

6 PROSPECTIVE JUROR: Yeah, he got real sick at
7 birth. Sorry, I did not know you were going to ask this.

8 THE COURT: I'm sorry, I didn't mean to do that,
9 but I just think that they need to understand a little bit
10 about what happened because their first thought would be, was
11 this in an accident, how did it occur? And I know that
12 that -- I mean, I'm sorry to have to bring that up. And I
13 know you've been working really hard on this for a long time
14 and it never goes away, does it? So we've all had some
15 things in our lives that have been really, really tough. And
16 how long did he live?

17 PROSPECTIVE JUROR: He lived two months.

18 THE COURT: Okay. Exactly.

19 PROSPECTIVE JUROR: Well, 55 days in the
20 pediatric ICU.

21 THE COURT: All right. Well, they didn't know
22 what it -- well, I might have known, but they didn't know
23 what happened. And I think there was too much speculation by
24 attorneys or parties as to what happened. So I'm sorry I had
25 to ask you, but I had to let them know. Now, do you now have

1 other children?

2 PROSPECTIVE JUROR: I do. I've had three more.

3 THE COURT: Okay. And how are they doing?

4 PROSPECTIVE JUROR: They're good. They're 15,
5 13, and 11.

6 THE COURT: Okay. All right.

7 Gentlemen, I only have men up here. I feel
8 really awkward. I think they would have been speculating
9 about what happened, and I didn't want them to do that
10 because too much respect for you. You want to tell them
11 the -- well, any questions? I just knew that was going to be
12 an issue, and I didn't want it to go unresolved, so are you
13 going to be okay?

14 PROSPECTIVE JUROR: Yeah, yeah.

15 THE COURT: I was trying to give you a moment to
16 feel a little better.

17 PROSPECTIVE JUROR: Yeah.

18 THE COURT: We appreciate what you're doing.
19 That's not it at all.

20 I am going to ask the Government: Do you have
21 any questions? I just thought may as well tell them now as
22 opposed to having everybody start speculating about what
23 happened. And also to say it's really a great thing you're
24 doing, so I understand that.

25 PROSPECTIVE JUROR: Thank you.

1 THE COURT: Anything from the Government?

2 MR. SCHOLL: Could I just ask what the nonprofit
3 is?

4 PROSPECTIVE JUROR: It's called the Forrest
5 Spence Fund. His name was Forrest. And we assist with the
6 nonmedical needs of critically and chronically ill children
7 and their families throughout the mid South. So families
8 that are struggling with winter, utilities, or can't get a
9 roof, we pay their bills. We offer grants to families. We
10 send families to counseling who have lost a child, and then
11 we work with nine area institutions throughout the --
12 throughout the mid South, and we provide things to those
13 hospitals.

14 THE COURT: And I just -- and it's a fair
15 question. I didn't -- I'm sorry to have to -- I'm trying to
16 take off the table speculation, and that's all I was trying
17 to do. Good deal. Well, thank you. Thanks for what you're
18 doing. Appreciate it.

19 PROSPECTIVE JUROR: Yeah, thank you, yeah. I
20 don't know if it's to you, I will say if -- I did want to say
21 too the only thing I would say is a year ago Wednesday, our
22 very best friend's child was murdered at that school shooting
23 in Nashville, and that has definitely really affected things
24 so --

25 THE COURT: The Covenant School?

1 PROSPECTIVE JUROR: Yes. That was -- the pastor
2 is our very best friend and roommate from college, so if that
3 takes into account anything that's going on, I can't do it.

4 THE COURT: I understand, and that will not be
5 the nature of the case at all.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: And that's a very fair question and a
8 very good point to raise.

9 MR. PALMER: It's been a year?

10 PROSPECTIVE JUROR: It's been a year Wednesday,
11 yeah.

12 THE COURT: Absolutely. Life is complicated, and
13 we all understand that.

14 PROSPECTIVE JUROR: Yeah, okay.

15 THE COURT: So if you're set and ready to go
16 back, we're going to let you go back.

17 PROSPECTIVE JUROR: Yeah, okay. Thank you.

18 MR. BALLIN: Your Honor, before she goes, would
19 you rather me ask questions of Jury No. 3 now about that
20 issue or wait until general voir dire?

21 THE COURT: Well, sure, you should ask them now
22 because this is a private area and if you wish to ask a
23 question -- although, this case is -- I'm going to tell you
24 very soon about the nature of the case, and I don't think it
25 will have any effect on -- you have a question?

1 MR. BALLIN: I do.

2 THE COURT: Okay. Well, remember now, once you
3 start speaking, nobody else on your side can speak.

4 MR. BALLIN: I plan to do voir dire.

5 THE COURT: Oh, my goodness, go ahead.

6 MR. BALLIN: I forgot what I was going to ask.

7 THE COURT: That would make it a lot quicker.

8 MR. BALLIN: No, I do remember.

9 The event of a year ago, Judge told you has
10 nothing to do with this case. If you are on the jury and you
11 deliberate, can you put that event out of your mind totally?

12 PROSPECTIVE JUROR: Honestly, I do not think I
13 can.

14 THE COURT: Okay. Well, the question is: Would
15 it influence you in the case? We're not -- we don't ask
16 people not to have a memory because we understand that.

17 I think we're going to rephrase that a little,
18 Mr. Ballin.

19 MR. BALLIN: How would this event affect your
20 ability to be fair and impartial in this case?

21 PROSPECTIVE JUROR: I mean, I don't think it
22 would affect me being fair and impartial. I think I'm just
23 struggling with -- -yeah, just in general of the heaviness of
24 this week, not being fair and impartial.

25 MR. BALLIN: If it was another week, do you think

1 that this event would be different for you as a juror?

2 PROSPECTIVE JUROR: Yeah, I mean, I think
3 timing-wise, this is a heavy week for me, for sure.

4 MR. BALLIN: So what I hear you saying is that
5 because it's the anniversary, because this is a criminal
6 case, probably it's not -- or is this the kind of case that
7 you're comfortable in deciding a case on solely on the
8 evidence presented from the witness stand and the law given
9 to you by the judge?

10 PROSPECTIVE JUROR: I mean, I would -- I mean,
11 because I'm called to oath and do what I'm supposed to do, I
12 would be impartial or whatever the other words were supposed
13 to be. Do what you've asked me to do.

14 THE COURT: Sure. I think -- anything else
15 because we're going to try to --

16 MR. BALLIN: Could I have one moment?

17 THE COURT: Sure.

18 PROSPECTIVE JUROR: Good golly, I can't imagine
19 what everybody out there is thinking right now.

20 THE COURT: No, no, no. Do you see why we needed
21 to talk about it?

22 MR. BALLIN: This is what we do.

23 THE COURT: This is our job. It's our job to
24 make sure. It's not your -- well, if they know what -- they
25 can find out later on in the privacy -- what you do. We're

1 just not telling everybody in public because that's okay.

2 Yes.

3 And -- yes, sir?

4 MR. BALLIN: Ordinarily, I would address you by
5 your name as a matter of respect, but you are Juror Number?

6 PROSPECTIVE JUROR: Three.

7 MR. BALLIN: Yes.

8 THE COURT: She's Juror 58, but she's in Seat 3.

9 MR. BALLIN: Seat 3. Thank you.

10 If the allegations in this case involve the
11 concept of murder for hire, does that change your ability to
12 be fair and impartial based on the fact that the child was
13 lost by murder? Do you need me to repeat that?

14 PROSPECTIVE JUROR: No, I heard you. So what
15 you're -- tell me what you're asking me.

16 THE COURT: Let me suggest this. In this case,
17 there's not an indication that anyone was actually killed, so
18 we're not going to be confronted with an actual death. I
19 will tell everybody on the panel fairly soon that the
20 allegation in the case is that the -- each defendant is
21 charged with murder for hire. That is an attempt to hire
22 someone to kill someone else. And the case is going to be
23 about that.

24 We don't know how it's going to come out. I
25 don't know how it's going to come out. We're going to have

1 witnesses. I -- you know, I -- I'm -- the good thing is we
2 have a jury, and I won't have to make the factual
3 determination.

4 The jury will have to decide that based on the
5 evidence presented as to whether or not the Government has
6 proven beyond a reasonable doubt the facts necessary to
7 sustain the charge in the case. And I'll give you the
8 elements of the charge and so forth at the time.

9 So it is -- it does involve that charge, but it
10 does not involve someone's demise. So the question is: Can
11 you decide the case solely on the evidence and the law and
12 not on any emotional response or preconceived notion for any
13 of the reasons that we talked about, the time of the year,
14 the events that have happened a year ago and so forth. Can
15 you do that?

16 PROSPECTIVE JUROR: I just say no.

17 THE COURT: Okay. It might be very difficult.

18 PROSPECTIVE JUROR: I think it would be very
19 difficult.

20 THE COURT: Okay. Okay. Well, I tell you what,
21 any questions from either side, any more questions? I'm
22 going to ask you to -- there should be a seat in that corner,
23 but I can't see you. Oh, no, they moved it. Yeah,
24 absolutely, it's supposed to be back over there. Thank you.
25 Thank you. So if you will have a seat just for a moment, I'm

1 going to check with counsel.

2 MR. BALLIN: It's our humble position that juror
3 in Seat 3, Juror 58 should be excused for cause.

4 THE COURT: Any problem?

5 MR. PALMER: No, Your Honor.

6 MR. OLDHAM: No, Your Honor.

7 THE COURT: Okay. Well, I think we should. This
8 is going to be a really tough time for her. It's pretty well
9 known what they do. You knew that already.

10 MR. BALLIN: When I heard the name, I recognized
11 that there's a race every year.

12 MR. SCHOLL: That's why I wanted to ask to see
13 what the name was.

14 THE COURT: Yes. So I think everybody knows this
15 has been a very tough time. Okay. We're going to let her be
16 excused.

17 And so, Juror 58, I like that tag. That looks
18 really good. I suppose you can keep it afterwards. We're
19 going to let you be excused in this case. Thanks for being
20 here, and thanks for sharing that. That's really, really
21 important. And everybody wants to make sure that you know
22 that they're very supportive, everything that you're doing.

23 PROSPECTIVE JUROR: Thank you.

24 THE COURT: So thank you so much. Good luck.
25 Thank you.

1 PROSPECTIVE JUROR: Thank you so much. Just let
2 me get my bag and leave?

3 THE COURT: Oh, absolutely.

4 MR. OLDHAM: Your Honor, are you going to call
5 someone else or are you going to do that in the next round of
6 jurors?

7 THE COURT: No, I'll do it right now.

8 MR. OLDHAM: Okay.

9 (End of discussion at side-bar.)

10 THE COURT: All right. Well, we're going to let
11 our juror be excused, and thank you so much. And we're going
12 to call someone to take that place. Then we're going to take
13 a break, but I have to tell you seven things before we take
14 that break. So that's the way that works.

15 Well, for all of you who have been waiting and
16 hoping that you would be the first one called after that,
17 we're going to call the next number.

18 CASE MANAGER: Your Honor, that number is 0039.

19 THE COURT: All right. I'll ask one question
20 when our juror gets in place.

21 Did you hear everything we asked about earlier.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: You got all the answers down.

24 PROSPECTIVE JUROR: I don't know about that.

25 THE COURT: Okay. I understand. I'll come back

1 after our break, and we're going to ask a few questions. I
2 am going to ask, though: What's the most important
3 characteristic for someone who is going to serve on a jury?

4 It's a test. The most important characteristic
5 for someone who is going to serve on a jury?

6 PROSPECTIVE JUROR: Be honest.

7 THE COURT: Okay. Be honest, but also be
8 impartial. Impartial. And it's kind of a -- see, you got to
9 be an example for all the rest. They're going to be ready
10 for it. I appreciate that.

11 Now, what we're going to do is because there are
12 this many of us, and if somebody doesn't need a restroom
13 break by now, I'm going to be concerned about you. So we're
14 going to take that. I have to tell you seven things before
15 we take a break.

16 And the first thing is that you cannot discuss
17 the case among yourselves. You don't really know anything
18 about it, and when you come back, we're going to tell you a
19 little bit -- a preview about what the charges are, what the
20 charge is in this case, and we'll ask you some more questions
21 about that.

22 So do not discuss anything about the case at all.
23 Don't even talk about what we're doing here because once you
24 start down that road, you start the process of making up your
25 mind, and we don't want you to do that. We want you to keep

1 an open mind.

2 The second thing is that you cannot speak to any
3 of the witnesses, parties, or attorneys in this case. Now,
4 there are a bunch of them. They will avoid you. They have
5 to. If you're seen speaking with someone who is a part of
6 the case, then it would appear that they were trying to
7 influence you, and that would be very inappropriate. That's
8 actually jury tampering, and Jimmy Hoffa went to prison for
9 that. So we're not going to -- we're not going to -- they're
10 not going to talk to you. They're not going to talk to you
11 about that.

12 By the way, he got tried in Chattanooga when he
13 went to prison, and he got -- he tampered with the jury in
14 Nashville. It wasn't here. Isn't that great? That makes me
15 feel better already. So do not speak to the witnesses,
16 lawyers, or parties at all.

17 The next thing is that if someone attempts to
18 speak with you, that you should immediately report that to a
19 court security officer, the gentlemen with the badges on here
20 and the blue jackets. You can speak to a member of my staff
21 or directly to me, but you should tell me very promptly in
22 some way that someone has attempted to talk with you about
23 the case.

24 Now, the other thing is -- the fourth thing is,
25 well, you can't speak among yourselves about the case, but

1 your question is, what about somebody else? What about
2 somebody at home, somebody at the office, can I tell them?
3 The only thing that you can tell someone is that I am a
4 prospective juror in a criminal case in federal district
5 court, and I cannot tell you anything else. And, of course,
6 they're going to say, well, tell me what it's about, tell me
7 what it's about. And the answer is, I can't tell you.

8 Now, right now, you don't really know, but you
9 will soon and, therefore, you cannot tell them anything
10 except, I'm a prospective juror in a criminal case in federal
11 district court, and the case is expected to be concluded this
12 week and it's highly likely. So three, four days, and I
13 think we're here also on Friday, even though that is Good
14 Friday, we would be here as necessary.

15 The fifth thing is that you cannot do any
16 research or make any inquiry at all. Now, right now, you've
17 heard some names and you cannot look up anybody on Google,
18 you cannot go to any platform, you can't -- absolute
19 prohibition. Absolute. I cannot be clearer about that. You
20 cannot go to any media source. You cannot do anything like
21 that at all. No research at all, so no electronic research
22 or any other kind of research.

23 So you can't go back and look up something for a
24 term that you're not quite sure about. And while I don't
25 mind if you look at the Constitution, I'm not going to

1 encourage you to go try to look at the Constitution on terms
2 of bias and prejudice because that's my job to tell you about
3 that. So no research at all, period, absolute prohibition.
4 I want to be very, very clear on that.

5 The next thing is that if there is something in
6 the media about this case, it's always possible. Then if you
7 see something about this case or it's something you think is
8 about this case, you should report that promptly the next
9 opportunity we are together. You should say, I saw something
10 on whatever it was. I didn't know at the time, but this is
11 what I saw. I need to tell you about it.

12 The key is to be transparent to tell us what you
13 saw, and more than likely, it is not a problem, but you must
14 be mindful of that. You must tell us if you do see something
15 in the media, any kind of media. And media is a big tent
16 nowadays. It's not TV. It's not the print media. It's
17 everything on your computer.

18 If anybody in any way attempts to contact you
19 through a media methodology or through a computer
20 methodology, you must tell us about it, and you will not have
21 done anything wrong, but you need to tell us.

22 The last thing is that you must keep an open
23 mind. You must keep an open mind until you've heard all of
24 the evidence in the case, the final arguments of counsel, and
25 the final instructions on the law. And then you would go to

1 the jury room at the end of the case, let's say on, say,
2 Thursday morning. I don't know when it will be, but maybe
3 Thursday morning. And you would then discuss the case among
4 yourselves, which is called your deliberation, and then, and
5 only then, would you attempt to make up your mind as to what
6 the verdict should be, and then would you attempt to reach a
7 verdict as a jury. So that's a ways away. That's how we
8 will proceed.

9 I have to tell you those seven things before we
10 take our first break. I have to repeat them in a couple
11 times, and then I'll refer to them in a shortcut way.

12 Now, I'm going to -- since there are a lot of
13 you, I need to know how we're going to handle this. There
14 are restrooms on this floor.

15 CASE MANAGER: They may have to go down to 9.
16 They may have to go down to 2.

17 THE COURT: Okay. There are restrooms on this
18 floor. There are restrooms on 2. Well, there are restrooms
19 on every floor, but restrooms on 9 and restrooms on 2. So
20 because of the number of people here and the time, my
21 goodness, what time is it? I know, it's 11:15.

22 We're actually going to take a 25-minute break.
23 What's your -- any floor is fine, but we need to have you
24 back in 25 minutes. After we get the jury, these breaks will
25 be compressed. They won't need to be nearly as long, so

1 that's how we'll handle that, 25 minutes from now. So it's
2 15 after. That should make it 20 till the hour. Is that
3 right? We got that right.

4 Okay. Everybody good on that? Okay. You now
5 understand what you need to do. We're going to hold
6 everybody here while you go out through the double doors. I
7 cannot bring you back in until that time period, so I will
8 not see you for another 25 minutes.

9 We're going to let everybody be excused. This is
10 your morning break. And there will be a lunch prepared for
11 you and provided for you on the second floor when we get to
12 lunchtime, so don't worry about that. We'll let everybody be
13 excused at this time, and we'll see you in 25, 24 minutes
14 now. Thank you.

15 (Prospective jury panel out at 11:15 a.m.)

16 PROSPECTIVE JUROR: I'm wanting to be excused.

17 CASE MANAGER: What is your number, ma'am?

18 PROSPECTIVE JUROR: 18.

19 THE COURT: We're going to have you stay. In
20 fact, I'll have counsel come around to side-bar. We have one
21 individual we need to speak with.

22 (At side-bar on the record.)

23 THE COURT: Yes, ma'am.

24 PROSPECTIVE JUROR: So, first of all, and let me
25 say, I would love to serve, okay? What has happened since

1 the time that I filled out the form, my mother is 91 years
2 old, and she was diagnosed with COVID pneumonia the 14th and
3 spent about eight days in the hospital in isolation, and I
4 stayed with her the whole time. She was discharged to rehab
5 last Thursday, and I've still been staying with her at night
6 and per- -- you know, going to see her during the day because
7 she has Parkinson's dementia, so the isolation on top of that
8 has left her way confused or intermittently confused.

9 I'm her only person here, and she was sending me
10 texts this morning before we started, and she's, you know,
11 agitated, you know. She's someplace where we can get on the
12 call light if she will get on the call light. So, basically,
13 I'm wanting to be excused so that I can take care of her.

14 THE COURT: You're the sole caregiver of your
15 mom, and that is normally something that we all respect, and
16 we understand that. I don't see any issue here. That's a --
17 that's a -- there are only a limited number of bases to
18 excuse someone, but one is sole caregiver of an individual
19 who needs you and your immediate attention.

20 So is there any objection by the Government?

21 MR. OLDHAM: No, Your Honor.

22 THE COURT: Any objection by the defendant, first
23 defendant?

24 MR. BALLIN: No, Your Honor.

25 THE COURT: Any objection by second defendant?

1 MR. SCHOLL: No, Your Honor.

2 THE COURT: All right. Well, look, let me let
3 you go. You go take care of her, and don't worry about it.

4 PROSPECTIVE JUROR: Okay. Thank you so much.

5 THE COURT: Thank you so much.

6 (End of discussion at side-bar.)

7 THE COURT: All right. We're going to take one
8 minute to speak to everybody, and then we're going to take
9 our break. We're going to unlock the door to the jury room.
10 That has a men's restroom and a women's restroom, but there's
11 a limited number of women, so they may be willing to share.
12 I don't know. But they're going to unlock that door.

13 Also if you -- there are other restrooms, but
14 that gives you the assurance that you won't run into anyone
15 and probably a little better way to handle that. Other than
16 that, I think -- anything else?

17 Yes, sir?

18 MR. SCHOLL: Judge, if I may, I don't know if
19 tech can come up and add one more computer screen or not or
20 if it somehow -- we can't see the computer screens back here.

21 THE COURT: Sure, sure.

22 MR. SCHOLL: I know when this case gets going --
23 I'm not worried about it right now since we're turning around
24 doing this, but when the case gets going --

25 THE COURT: No, that's fine. We'll see if we can

1 get somebody from IT up and see if we can. I think we
2 probably can. We just need to get the tech up. Let's try to
3 do that. Anything else?

4 MR. SCHOLL: No. Thank you, Judge. I appreciate
5 that.

6 THE COURT: Okay. Anything else from the
7 Government?

8 MR. OLDHAM: No, Your Honor.

9 THE COURT: Anything else from defense?

10 MR. PALMER: No, sir.

11 THE COURT: Okay. Now, our schedule is that the
12 lunch is actually supposed to be here at 12 noon, so there
13 may be a short period of time that they're here. I will
14 caution everybody just to remember that I will allow you to
15 ask a few questions. I'm not -- I kind of emphasize the word
16 "few." If you need me to ask a question, you need to tell me
17 about it, and I will. Or I may, depending on what the
18 question is.

19 The questions that attempt to suggest to a jury
20 that they need to commit to a position if such and such
21 events occur are inappropriate because they seek to
22 precondition the jury, and they are just plain not
23 constitutional, although in Texas, they're probably allowed.
24 They're allowed also in state court in Tennessee to some
25 degree. They don't do that anymore, do they, over there,

1 Mr. Scholl?

2 MR. SCHOOL: No, sir.

3 THE COURT: They've given that up completely.

4 MR. BALLIN: Yes, sir.

5 THE COURT: Really, they have? I feel better. I
6 feel better. When I was practicing, I'm not sure they gave
7 it up, but, okay. So I just want to remind everybody.

8 Usually, it's a very straightforward -- and
9 you're not required to ask any questions at all. And
10 sometimes the best course of action is not to ask much.

11 Okay. I think that's it. We need to take that
12 short break at this -- well, not so short -- that break right
13 now, and I'll see everybody at 20 till. And anything else?

14 MR. OLDHAM: No, Your Honor. Thank you.

15 THE COURT: Okay. I think we're good. Thank you
16 all very much.

17 (A recess was taken from 11:21 a.m. to 11:41 a.m.)

18 THE COURT: I think we're on time, and we're
19 ready to bring the panel in. So ready to bring the panel in.

20 MR. PALMER: Your Honor, I need to report a
21 contact.

22 THE COURT: Okay.

23 MR. PALMER: It was -- I was taking Ms. Grayson
24 downstairs to the restroom.

25 THE COURT: Okay. Well, I mean, we have a

1 restroom up here. But if you want to go downstairs, you want
2 to go downstairs, but that's a risk.

3 MR. PALMER: It will not happen again. I was
4 taking her down, and there was contact.

5 THE COURT: Okay. Well, did anybody say anything
6 to you or they just ran into them?

7 MR. PALMER: No.

8 THE COURT: I think we're okay.

9 MR. PALMER: It was nothing.

10 THE COURT: Okay. All right. You can be seated
11 as you come in. Of course, they're going to be seated. And
12 we're going to let our jurors get up here. And we're going
13 to see how far we can get before lunch.

14 (Jury in at 11:43 a.m.)

15 THE COURT: We have to call one more juror as
16 you're coming in. We have to call a juror to take Seat No.
17 13.

18 CASE MANAGER: Your Honor, that juror is 0012.

19 THE COURT: Yes, sir, Seat 13.

20 All right. I think we have everybody.

21 Well, Juror No. 3. You're our new Juror No. 3.

22 How are you?

23 PROSPECTIVE JUROR: Good.

24 THE COURT: Yeah. Which part of the county are
25 you from?

1 PROSPECTIVE JUROR: Shelby County.

2 THE COURT: Okay. All right. Absolutely. And
3 did you hear all those questions I asked earlier?

4 Let me start over: What do you think is the most
5 important characteristic and so forth?

6 PROSPECTIVE JUROR: Yes, I heard all of them,
7 yeah.

8 THE COURT: Okay. And what is the second
9 question, which is: A juror is required to be impartial;
10 what is an example of something as to -- a characteristic as
11 to which people sometimes are biased or prejudiced?

12 PROSPECTIVE JUROR: How they look.

13 THE COURT: Okay. And appearance -- it's
14 interesting. Appearance is probably the most important thing
15 in terms of analytically. So appearance is a big deal.

16 Now, does that mean that we should be more kindly
17 disposed toward people who are really good looking or people
18 who are less good looking? What about that?

19 PROSPECTIVE JUROR: We should judge everybody
20 equal but . . .

21 THE COURT: Judge everybody equal. And I always
22 ask: Do you think that Robert Redford, when he was young,
23 got the best table in the restaurant when he went in
24 and asked for a table?

25 PROSPECTIVE JUROR: I'm sure he did.

1 THE COURT: He did because he was a handsome guy,
2 and he also was a celebrity, so that was one of those things.
3 But does that apply here?

4 PROSPECTIVE JUROR: No.

5 THE COURT: No, it doesn't. None of that applies
6 here.

7 Okay. Well, let's get back to our juror in Seat
8 13. That's Juror 0012. How are you doing today?

9 PROSPECTIVE JUROR: Pretty good.

10 THE COURT: All right. Absolutely. Do you want
11 to tell them what part of the city or county or district
12 you're from? We've got four counties in this --

13 PROSPECTIVE JUROR: Shelby.

14 THE COURT: You're in Shelby, okay. Absolutely.
15 And, of course, we also cover -- who -- I got somebody out
16 there from Lauderdale? Who have I got somebody out there
17 from Lauderdale? I should. Absolutely. Right there.
18 Lauderdale.

19 Anybody from Tipton out there? We should have
20 people from Tipton. Yes.

21 Fayette County? Fayette County, my goodness, I
22 have all you guys. Absolutely. We remind everybody that
23 we're not just one place.

24 And the Western District of Tennessee actually
25 goes to the Tennessee River with one county crossing the

1 Tennessee River. So I think that's -- Mr. Oldham ought to
2 know. Is it Perry County, Mr. Oldham? Is that right?

3 MR. OLDHAM: I think it is Perry County.

4 THE COURT: It is Perry? Got that right? Okay.
5 So we cover a big area.

6 All right. Well, our juror in Seat 13, why did I
7 go through the -- one, did you follow that exercise we went
8 through, you know, where I ask everybody, oh, you know --

9 PROSPECTIVE JUROR: I did.

10 THE COURT: -- Seats 1, 2, 3, and 4? What did
11 you think about that?

12 PROSPECTIVE JUROR: It's procedure.

13 THE COURT: Okay. It's a procedure. That's
14 true. Why do we go through that exercise with every jury?
15 We ask them to look out there and pick out people. You know,
16 that sounds kind of dangerous. I mean, you wouldn't want to
17 pick out people. Why do we do that? What's the point of
18 going through that exercise?

19 PROSPECTIVE JUROR: To try to see what everyone's
20 mindset is.

21 THE COURT: Okay. We want to see what their
22 mindset is, but we also want to treat it like a vaccination.
23 You know, like a vaccination. Once I've gone through that
24 exercise, I'm never going to use those characteristics again,
25 right? I don't ever want to -- does that make --

1 uncomfortable.

2 Is it uncomfortable when you ask a question like
3 that, pick out somebody you think is the lawyer for the party
4 bringing the claim? Pick out the defendant. That's a tough
5 one. Pick out the party representing the Government. Why is
6 that important that we look at people and make the -- draw
7 the conclusions that we really should draw?

8 PROSPECTIVE JUROR: To eliminate prejudice.

9 THE COURT: Eliminate prejudice, absolutely.
10 Absolutely. And make sure that we're not going to do
11 something that is inappropriate, absolutely.

12 Tell them what you do, if you don't mind, and I'm
13 not going to get very specific because we're an anonymous
14 jury, but tell them what you do.

15 PROSPECTIVE JUROR: I'm a retired truck driver.

16 THE COURT: Okay. I always like to ask that one
17 for this reason. Do you ever find that people have
18 preconceived notions about truck drivers?

19 PROSPECTIVE JUROR: All the time.

20 THE COURT: All the time, absolutely.

21 And how important is it to have truck drivers in
22 the United States?

23 PROSPECTIVE JUROR: It's very important.

24 THE COURT: Very important. And is there a
25 shortage of truck drivers now?

1 PROSPECTIVE JUROR: No.

2 THE COURT: There's not? Oh, I didn't know that.

3 Okay. That's -- I feel better already. Absolutely.

4 Can you tell us the longest trip you ever had to
5 make?

6 PROSPECTIVE JUROR: Five hundred miles.

7 THE COURT: Okay. Were you a regional driver or
8 across the road --

9 PROSPECTIVE JUROR: I was local in my last years.

10 THE COURT: Local? Okay. Absolutely.

11 Absolutely.

12 What is the thing that a truck driver worries
13 most about happening when you're driving a truck?

14 PROSPECTIVE JUROR: Other drivers not
15 appreciating what we're doing.

16 THE COURT: Absolutely. Absolutely. And so how
17 long have you been retired?

18 PROSPECTIVE JUROR: Six months.

19 THE COURT: Six months. Do you miss it?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. All right. Absolutely.

22 What makes the jury different? You know, I
23 ask that question -- I'm not going to ask every person who
24 comes up later every question probably, but what does make a
25 jury different so that a jury can do what it would be harder

1 to do as an individual?

2 Why is a jury different? How does a jury -- how
3 is a jury structured so that a jury can make a decision in
4 conformance with the constitutional requirements whereas an
5 individual might struggle with that? What are the things
6 that make a jury different? There are about six, but I'll
7 settle for one or two.

8 PROSPECTIVE JUROR: Well, a juror -- a jury has
9 the job of making a decision that could change someone else's
10 life, and we don't know these people. So we have to -- we
11 have to judge based on the information that we receive.

12 THE COURT: Okay. Now, but a jury -- what makes
13 a jury different? I mean, a jury actually decides a limited
14 question. The jury decides whether or not the elements of
15 the crime have been proven by the Government beyond a
16 reasonable doubt, and they return a verdict. What are your
17 two choices in returning a verdict? I mean, they're
18 either --

19 PROSPECTIVE JUROR: Guilty or not guilty.

20 THE COURT: Guilty or not guilty, absolutely.
21 And we don't know the answer. We don't know the answer on
22 that one. I don't certainly at this time.

23 But the jury is different from individuals
24 because of what? You can name any of the ones we talked
25 about or one that you think is -- that we've not talked

1 about. Why is a jury able to do that because a jury doesn't
2 decide the issue -- and I will tell you this, never decides
3 the issue of punishment. They don't decide that. That's not
4 for the jury to decide, and that's a good thing. That means
5 you don't have that burden of deciding that. That's not one
6 that anybody welcomes. It really isn't. What makes a jury
7 different?

8 And I'm going to come back to your colleague in
9 Seat 3. What makes a jury different?

10 PROSPECTIVE JUROR: What makes a jury different?
11 Well, we all from different backgrounds.

12 THE COURT: It's diverse. That's -- absolutely.
13 The jury is from different backgrounds, and that's important.

14 And I'm going to pass it down to juror in Seat 3.
15 Okay. He's going to add to that list. What makes a jury
16 different?

17 PROSPECTIVE JUROR: We're all diverse. We all
18 have different backgrounds.

19 THE COURT: Right. But that's not the only
20 thing. I mean, what makes a jury verdict reliable versus
21 individual judgment perhaps not as reliable? This is a test.

22 Y'all are -- all you guys want to raise your hand
23 out there and say, I've got three or four of those, right?
24 No. I'm just checking. So there were about five things we
25 mentioned that makes a jury different.

1 PROSPECTIVE JUROR: Well, for one thing, every
2 has to agree.

3 THE COURT: It has to be unanimous. Okay. And
4 you are, what --

5 PROSPECTIVE JUROR: Yes, sworn in.

6 THE COURT: Sworn in, which is very different
7 than everyday life.

8 Okay. And you have what basis to make a
9 decision?

10 PROSPECTIVE JUROR: On the facts.

11 THE COURT: On the facts and the evidence. Those
12 are -- that's a good summary of -- there are a couple of
13 other things, but those -- it's a good summary of what makes
14 a jury different.

15 Okay. Now, would it help for all of you to know
16 the nature of the case in order to know if you can really sit
17 on the jury and be fair and impartial? because you don't
18 know the nature of the case right now. You don't know it.
19 And that's sort of the next component that we have to get to,
20 is what's the nature of the case? Let's see what's going to
21 happen here.

22 What I'm going to do first before I get to that
23 is I'm going to ask you: If someone brings up something that
24 is outside the record and something you should not consider,
25 they bring up somebody's gender, they bring up somebody's

1 ethnicity, or they have an accent, and we say, well, I don't
2 like their accent, or they say something -- I'm going to put
3 it very directly, I didn't like the way that the witness or
4 anybody else looked. And they really mean it. You know, I
5 didn't like the way they looked. And they're using that as a
6 basis to make a decision.

7 Of course, we all look different. Do you think
8 you ought to say something if someone says something like
9 that in the jury room? I just don't like the way he looks.
10 And you say, oh, you don't really mean that, you don't really
11 mean that. Yeah, I really mean that. I just didn't like the
12 way they looked and, therefore, I'm not going to believe him
13 or her because I just didn't like the way they looked. You
14 know, maybe they've got a tattoo. Maybe they've got a
15 piercing. You know, that's all sorts of things.

16 Do you think you ought to say something if
17 somebody brings up an unconstitutional factor that really
18 means appearance or it means gender, race, national origin,
19 or something else, all these many things that are not
20 allowed? Do you think you ought to say something?

21 PROSPECTIVE JUROR: Yes, you should.

22 THE COURT: You should. Right. We all have to
23 think about that.

24 So what would you say if somebody brings up a
25 factor like that?

1 PROSPECTIVE JUROR: It's going to end up being a
2 mistrial or something if we don't agree, if all 12 of us
3 don't agree.

4 THE COURT: Well, but the first thing, we're in a
5 discussion, and so the person that brings it up, sometimes
6 people say things you find out maybe they didn't exactly
7 mean. Is there something that might be appropriate to say,
8 would be appropriate to say, if somebody says something that
9 is bringing in an unconstitutional factor? What might the
10 jury say -- a juror say? Would you be willing to speak up?

11 PROSPECTIVE JUROR: I guess I would.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: I don't know if I would or
14 not.

15 THE COURT: Okay. Well, think about it.

16 PROSPECTIVE JUROR: I would hope I would.

17 THE COURT: Well, hand it over to your young
18 colleague right next to you. He's the youngest one on the --
19 how old are you?

20 PROSPECTIVE JUROR: I'm 44.

21 THE COURT: Oh, my goodness, he's got my
22 completely fooled. Okay. Who is under 44 on the panel? Oh,
23 youngsters down there. Okay. How old is our juror in Seat
24 No. 4?

25 PROSPECTIVE JUROR: Thirty-eight.

1 THE COURT: Everybody wants to be younger. How
2 old is our juror in Seat No. 7?

3 PROSPECTIVE JUROR: He's not supposed to -- oh,
4 62.

5 THE COURT: Do I have no one under 30 in this
6 group? How many are under 30 out there? All right. My
7 gosh, we've got a -- congratulations is all I can say.

8 All right. Well, what would be appropriate -- in
9 Juror Seat No. 2, what would be something appropriate to say
10 if someone brings up an unconstitutional factor. They say --
11 they genuinely mean they don't like the way somebody looks,
12 but it can be all those factors we talked about. You know, I
13 didn't like X or Y or Z, and the answer -- and, therefore,
14 I'm not going to believe that person. What do we do?

15 PROSPECTIVE JUROR: We say that's irrelevant.

16 THE COURT: Okay. We say it's not relevant. And
17 they say -- and why is it not relevant?

18 PROSPECTIVE JUROR: Because it doesn't pertain to
19 the evidence in the case.

20 THE COURT: It doesn't pertain to anything that
21 we can consider in the case. It's an unconstitutional
22 factor.

23 Would you be willing to say that and speak up if
24 somebody brings up an unconstitutional factor?

25 PROSPECTIVE JUROR: Absolutely.

1 THE COURT: Okay. We have to think about -- all
2 of us have to think about that. So we're going to pass that
3 all the way down to juror in Seat No. 6 and 7, and what might
4 you say?

5 PROSPECTIVE JUROR: That that's not considering
6 what the facts would be, and you can't judge by whatever that
7 person looks like or what they've said because that could
8 hinder, you know, them as a -- as a key witness or something.
9 They -- you know, they may be stating something and if I've
10 decided, well, I just don't like that person, I'm not going
11 to believe them, you just can't do that.

12 THE COURT: Right. We do listen to the evidence
13 as it comes in. So we can listen obviously and want to
14 listen attentively as to what each witness has to say, but we
15 don't look at that person and say, well, they didn't wear
16 clothes I like today. You know, I didn't think they were
17 appropriately dressed for court.

18 That's not the issue. If somebody comes in and
19 they've got a tank top on and tattoos on their arms, and they
20 start -- are you going to say, well, I can't believe them.
21 Are you just going to say you have to wait and listen?

22 PROSPECTIVE JUROR: No, I have to wait and
23 listen.

24 THE COURT: You have to wait and listen. And,
25 you know, we just can't -- that's just not how it's done. We

1 don't -- we wait and listen to each witness with respect, and
2 we listen to see what they have to say, and we make our
3 judgments based on the evidence and not on physical
4 appearance. I don't know if anybody is going to have a tank
5 top and tattoos, but it can be many things that cause us to
6 have -- you know, somebody said hair.

7 I think we got back there juror in Seat No. 12.
8 Hair, right? I don't like their hair. We don't go there.
9 We're not going there. We're not going there, absolutely.
10 And so you would speak up and say in a couple of words what
11 might you say to the person who brings up an unconstitutional
12 factor or something outside the record?

13 PROSPECTIVE JUROR: Basically, that's giving a
14 biased opinion or that you can't do that. You've just got to
15 listen to the facts that they have presented.

16 THE COURT: Right. Let's say we can only decide
17 based on the evidence presented in the case. We have to
18 really think about what we're going to say, right? All of
19 you are thinking about it now. I could really say it and
20 start a fire in the jury room. We don't want to do that.

21 We want to -- I'm going to hand it back to our
22 juror in Seat 12. Do you see what I'm getting at? It does
23 matter how you think about this and what you have to say. If
24 somebody brings up an unconstitutional factor and you feel --
25 would you -- one, would you be willing to speak up?

1 PROSPECTIVE JUROR: Definitely because we want
2 them to focus on the facts and realize why we're here, and as
3 you said, we have taken an oath to do that, and it's very
4 important. So based on that, we shouldn't be here on these
5 little mediocre facts, but just stick to the facts so we can
6 make an honest decision and a bias decision.

7 THE COURT: Stick to the evidence. We can only
8 decide the case on the evidence and the law. And we can't
9 decide it on some unconstitutional factor. But we have to
10 think about what we're going to say because if we don't do
11 that -- the jury right next to you wants to say something, so
12 I'm going to go to the jury in Seat 11. Right? She's right
13 there. What do you think? Don't you think we ought to think
14 about this ahead of time?

15 PROSPECTIVE JUROR: Yes. I agree with what
16 everybody has already said. We -- you know, I would just say
17 we're not judging on what they look like. We're judging on
18 the facts and the evidence of the case.

19 THE COURT: Okay. But we really do have to think
20 about it because if we say something inflammatory, it might
21 not be a positively received -- we just need to bring us back
22 to the focus on the evidence and the law. So we want to
23 thoughtfully do that. Tell them what you do.

24 PROSPECTIVE JUROR: What I do? I work in
25 financial services.

1 THE COURT: Right. Now, if you make a decision
2 in financial services that's not based on the facts, just on
3 a whim, what could happen?

4 PROSPECTIVE JUROR: Bad, bad. It would be bad.

5 THE COURT: It would be bad, to say the least,
6 and this is -- this is at least as important if not more
7 important than that; is that fair?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Okay. And I'm going to ask your
10 colleague in Seat 12. Tell us what you do.

11 PROSPECTIVE JUROR: I'm retired happily for the
12 last three years. I retired from FedEx. I worked for a
13 vendor in food service. I was blessed to feed a lot of
14 wonderful people, even Fred Smith.

15 THE COURT: That's amazing. That's amazing.
16 Absolutely. Absolutely. Well, glad -- congratulations on
17 being retired.

18 PROSPECTIVE JUROR: Thank you.

19 THE COURT: And so that -- but we all have
20 different perspectives. We're going to see things that are
21 very important for everybody else to hear. That's very
22 important.

23 Okay. Now, I'm going to hand that back down to
24 Seat No. 8. I don't want to leave anybody out here. Would
25 you like to know the nature of the case so we know whether we

1 can really be fair and impartial? Would you say there's some
2 kind of cases that would be harder to sit on than others?

3 PROSPECTIVE JUROR: I personally don't need to
4 know the nature of the case to be fair and impartial. I
5 mean, I'm going to make my decision on the facts that are
6 presented to me.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: Also what the case may be.

9 THE COURT: I understand that. This is not a
10 case -- and I'm going to give you an example. This is not a
11 case, for example, about child sex trafficking. So,
12 obviously, not at all. I'm using that just as an example.
13 It's not that.

14 But we usually tell people things like that so
15 that they can think about whether they can sit on the jury.
16 This doesn't have anything to do with that. This doesn't
17 have anything to do with that.

18 But the reason I'm mentioning that is I think the
19 nature of the case can affect sometimes our ability to sit on
20 the jury and be fair and impartial. So is it okay if I tell
21 you the nature of the case?

22 PROSPECTIVE JUROR: It's okay if you tell me the
23 nature of the case.

24 THE COURT: What I'm going to do is I'm going to
25 get out a copy of the indictment. That's the charge in this

1 case, and we're going to kind of watch our time. They're
2 going to tell me when lunch is there. But this is what the
3 indictment in this case says. And so you'll all know the
4 nature of the case, and I can then ask you: Knowing the
5 nature of the case, does that in any way affect your ability
6 to sit on the case and be fair and impartial. This is a one
7 count case. Does the number of counts make any difference?

8 PROSPECTIVE JUROR: No.

9 THE COURT: It doesn't make any difference. By
10 the way, tell them -- I'm going to make sure I've got this
11 down. Tell them what you do again.

12 PROSPECTIVE JUROR: I'm an electronic engineer.

13 THE COURT: Okay. And that's pretty amazing
14 stuff. How long have you been doing that?

15 PROSPECTIVE JUROR: For 33 years now.

16 THE COURT: Okay. Have you been fascinated by
17 the electronics and all the things that have been going on in
18 some of the stories that have been in the news lately?

19 PROSPECTIVE JUROR: Well, yes, and then it
20 changes almost daily.

21 THE COURT: Absolutely. Absolutely.

22 Now, this is what the case is about. It is just
23 an indictment. It is not evidence in the case, and you
24 cannot consider it as evidence at all. The fact that there
25 is an indictment is not evidence of anything. You can never

1 regard it as that. But it is a way to tell you and me and
2 the defendants what the charges are because, otherwise, we
3 wouldn't know what they are. So we have to know the nature
4 of the charges.

5 This is a one count case. Again, that is not --
6 it doesn't matter how many there are. The question is
7 whether or not the Government can prove beyond a reasonable
8 doubt the facts necessary to sustain the charges in the
9 indictment.

10 This is what it says:

11 Count 1, from on or about August 26th of 2022,
12 and continuing until on or about September 11, 2022, in the
13 Western District of Tennessee and elsewhere, the defendants,
14 Ashley Grayson, that's Ms. Grayson, and Joshua Grayson,
15 that's Mr. Grayson, together with others unknown -- known and
16 unknown to the grand jury, did knowingly and intentionally
17 conspire to use and cause another to use a facility of
18 interstate commerce to wit, a cellular telephone with the
19 intent that the murder of DH, that's the initials, DH, a
20 person, a real person known to the grand jury, be committed
21 in violation of the law of the State of Mississippi and as
22 consideration for the receipt of and promise and agreement to
23 pay money and other items of pecuniary value all in violation
24 of Title 18 United States Code Section 1958.

25 And that's the charge in this case. Sometimes

1 it's referred to as a murder for hire charge. I don't know
2 what happened in this case, but I tell you what the charges
3 are because each of you has to think about does that, in any
4 way, affect my ability to sit on the jury and be fair and
5 impartial? And let me give you an example.

6 If you had a first cousin, who last year was
7 killed or seriously injured, wounded in some type of criminal
8 conduct, you would need to tell me that, and you would need
9 to tell the parties that because this might be a difficult
10 case for you to sit on. I don't know that. I don't know
11 that. But it might be.

12 And, understandably, it might be difficult for
13 you to disassociate what has happened in your experience, in
14 your family, in deciding the case, and it's not appropriate
15 to consider that. You have to decide whether the Government
16 has proven beyond a reasonable doubt each of the elements
17 necessary to sustain the charges in this indictment.

18 So I tell you that because if you have personally
19 been a victim of a crime, if you have had someone who
20 threatened you with physical harm, or if you were falsely
21 accused of that, then it might be really hard to sit on this
22 jury and be fair and impartial.

23 Now, I'm going to have to check with each of you.
24 I'm kind of watching my time because in a moment, they're
25 going to tell me that lunches have arrived on the second

1 floor.

2 CASE MANAGER: 12:15 is the ETA.

3 THE COURT: So they've got another few minutes
4 before lunch gets here.

5 I'll tell you the nature of the charges because I
6 believe each of you has told me -- and I didn't go back and
7 ask jurors in 13 and 3, but they said, I think I can be fair
8 and impartial. And I think -- and juror in Seat 3, I
9 understand that that would be your thought before you heard
10 what I said, right?

11 PROSPECTIVE JUROR: (Moving head up and down.)

12 THE COURT: And juror in Seat 13, I mean, you'd
13 say, I think I can be fair and impartial; is that right?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. But now that you know the
16 nature of the charge, think about anything in your life that
17 may affect your ability to sit on the jury and be fair and
18 impartial.

19 If you're a small business owner and somebody
20 came in and injured or shot or harmed one of your employees
21 and it was-- particularly if it was recent, that might be
22 hard. Think about it.

23 So let me go back to the juror in Seat 12. Does
24 knowing -- I'm sorry, not 12. I'm sorry, 8. I'm trying to
25 keep you. I'm trying to hold on to you. Is there anything

1 about the nature of the charges that might in any way affect
2 your ability to sit on the jury and be fair and impartial?

3 PROSPECTIVE JUROR: No, there's not.

4 THE COURT: Have you had any occasion in which
5 someone in the family has been threatened with physical harm,
6 and it was a point of concern to you.

7 PROSPECTIVE JUROR: No, not to my knowledge.

8 THE COURT: Okay. And I am going to ask in what
9 you do in your -- by the way, day-to-day work for you would
10 involve what?

11 PROSPECTIVE JUROR: I work at the prison, so I do
12 all the electronics at the prison.

13 THE COURT: Right. And there's more than one
14 prison, so I'm going to ask which one?

15 PROSPECTIVE JUROR: Shelby County penal farm.

16 THE COURT: Shelby County penal farm. I'm going
17 to put that down as a side-bar for us, if that's okay,
18 because I will need to ask you some questions. I need not
19 ask in front of everybody else.

20 Okay. By the way, how long have you been there.

21 PROSPECTIVE JUROR: I've been out there for going
22 on eight years now.

23 THE COURT: Okay. And do you have a rank or is
24 it -- are you a contract employee, a regular employee, or do
25 you have a rank?

1 PROSPECTIVE JUROR: No, I don't have a rank. I'm
2 just a regular employee.

3 THE COURT: That's what I understood, but I want
4 to make sure I understand. We're going to put that down as a
5 side-bar, and we'll get that at the appropriate time.

6 Okay. Let's go to the juror next to you in Seat
7 9. Does knowing the nature of the charges in any way affect
8 your ability to decide the case solely on the evidence?

9 PROSPECTIVE JUROR: No, it does not.

10 THE COURT: Anybody, friend, family who has ever
11 been threatened with serious bodily harm?

12 PROSPECTIVE JUROR: No. I have never had anyone
13 close to me involved with anything like that.

14 THE COURT: Okay. Let's go to juror in Seat No.
15 10. Anything about the nature of the charges that would in
16 any way affect your ability to sit on the jury and be fair
17 and impartial? Now, let me talk about that just a second.

18 Nature of the charges means I heard the charges,
19 and now I think having heard the charges that I think that I
20 either can't be fair, or I think I know what happened. So
21 anything about -- and, of course, you shouldn't, but it could
22 happen. Anything about the nature of the charges that might
23 in any way affect your ability to sit on the jury and be fair
24 and impartial?

25 PROSPECTIVE JUROR: No, Ii don't think so, so.

1 THE COURT: Okay. Anyone in the family, close
2 friend, so forth who has ever been threatened with serious
3 bodily injury, serious injury, probably better way to say
4 that.

5 PROSPECTIVE JUROR: I'd have to say our company
6 was. A gentleman tried to hit our building, killed a couple
7 of people, came in, jumped off the second floor, tried to
8 commit suicide. And now we have to have armed guards at our
9 doors.

10 THE COURT: I'm actually going to put that down
11 as a side-bar, and we'll talk about it a little bit more at
12 the side-bar. Did that in any way -- I am going to ask you:
13 Were you in any way harmed in that process?

14 PROSPECTIVE JUROR: No, sir, not at all.

15 THE COURT: Okay.

16 Juror in Seat 11, anything about the nature of
17 the charges that might in any way affect your ability to sit
18 on the jury and be fair and impartial?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Anybody in the family who -- or
21 friends, close friends, relatives, someone you know well, who
22 has ever been threatened with serious bodily injury?

23 PROSPECTIVE JUROR: Fortunately, no.

24 THE COURT: Okay. And let's go to juror in Seat
25 12. Does knowing the nature of the charges in any way affect

1 your ability to sit on the jury and be fair and impartial?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Anybody in the family, close friends,
4 someone who is close to you, who has been threatened with
5 serious bodily injury?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: I'm going to put that down as a
8 side-bar. Okay.

9 Juror in Seat 13, anything about the nature of
10 the charges that might in any way affect your ability to
11 decide the case solely on the evidence?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Have you on anybody in the family or
14 close friends, someone you know well ever been threatened
15 with serious bodily injury?

16 PROSPECTIVE JUROR: No.

17 THE COURT: And I am interested in your
18 profession. Is -- did you feel that you needed to -- you
19 were a local driver?

20 PROSPECTIVE JUROR: Right.

21 THE COURT: Were there any extra precautions you
22 ever took in order to be protected?

23 PROSPECTIVE JUROR: Always.

24 THE COURT: Okay. All right.

25 And then let's go to juror in Seat 14. Anything

1 about the nature of the allegations in the case, anything
2 about the nature of the case that would in any way affect
3 your ability to sit on the jury and be fair and impartial?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Anybody in the family or good friend
6 who has ever been -- or someone you know very well who has
7 ever been threatened with serious bodily injury?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: I'm going to put that as a side-bar
10 also. I'm watching downstairs. They'll tell me as soon as
11 lunch is here. We've probably got a minute. Let me see if I
12 can get through -- I'll tell you what. I'm going to leave
13 the first row, we'll come back and ask all of you. Think
14 about this. This is serious. You know, if somebody
15 threatened you or, you know, if something happened, I need to
16 know about it. Or if you were falsely accused, I will say
17 that also of that, then I will need to -- I must know about
18 that. You must tell me about it. Same way with everybody
19 else out there. We want to know our situation.

20 Well, lunch has arrived. I'm actually going to
21 try to keep -- we're going to take at least -- is one hour
22 enough? They asked me to take a little more time, an hour
23 and 15, at least an hour and 15. Okay.

24 Lunch has arrived. We're going to take an hour
25 and 15 minutes. I'm going to ask my four individuals on the

1 back row. That's 8, 10, 12 and 14 to wait with me at least a
2 few minutes to see if we can go through our discussions at
3 side-bar to save everybody else a little time.

4 Now, there are seven things that you have to
5 remember at all times. Do not discuss the case among
6 yourselves, period. Now you actually know something to say
7 to somebody, right? Don't do it. It's a temptation. You
8 know, just don't talk about it. I know you have to
9 internalize that, but please do not talk about the nature of
10 the case or what we're doing in this process until we've
11 completed this whole process.

12 The second thing is don't speak to any of the
13 witnesses, lawyers, or parties here. And if they
14 inadvertently see you -- they actually quickly told me I
15 think I may have run into somebody, but it was of no
16 consequence. But they will come tell me because they
17 understand the critical nature of not speaking to you, and
18 they won't do it. So if you see one and you say, hello, they
19 are not going to say hello. They're going to look down and
20 look embarrassed. So do not speak to them.

21 I know in the American South, there's a great
22 tendency to speak to everybody we think we know. Do not do
23 that.

24 The third thing is that if anybody tries to speak
25 to you about the case, you should immediately report that to

1 the court security officer, a member of my staff, or me.
2 That would be very important. And we will take the
3 appropriate steps. We will handle it appropriately. We
4 won't overreact, but we do need to know that. So please,
5 please tell us if that occurs.

6 Now, you also -- I'm going to skip one or two
7 things, but don't do any research or make any inquiry. Do
8 not go on Google or go look it up in a book or try to go to
9 the library and look up the statute under which the
10 defendants are charged. Don't make any inquiry. That is not
11 your job. And it will create a significant problem if you
12 were to attempt to do so.

13 Don't do any research at all. Don't go back and
14 see if you can find out any background. That is not your
15 responsibility. That will be the responsibility of the
16 parties to present all the evidence in the case. And the
17 Court will give you the instructions on the law. So,
18 absolutely, do not make any inquiry at all.

19 Of course, also avoid things from the media that
20 might be about this case. I will tell you, there could be
21 something in the media about this case. There could be
22 something online. There could be something that definitely
23 could come up. It probably won't, but if you inadvertently
24 see something or potentially see something, you must tell me
25 about it, and it will be okay. You're not going to get in

1 trouble. You just need to be very transparent. So if you
2 see something about this case, you need to tell us about it
3 immediately.

4 And, of course, continue to keep an open mind.
5 Now, I'm sort -- I'm sort of abbreviating things because you
6 heard my full discussion earlier.

7 We're going to let you have lunch -- oh, my
8 goodness, it's going to bring us back at what time,
9 Mr. Sample?

10 CASE MANAGER: Seventy-five minutes.

11 THE COURT: Seventy-five minutes from now. My
12 goodness, I'm showing at one -- I've got 11:22, something
13 like that.

14 CASE MANAGER: Yes, sir, 12:22.

15 THE COURT: An hour and 15 minutes from now, so
16 we're going to talk about -- I'm sorry, obviously, 12:22, so
17 we're talking about 1:22 plus 15, so that ought to do 1:37.
18 Let's make that about 1:35.

19 Okay. So enjoy your lunch. There are plenty of
20 things to talk about. You can talk about NCAA basketball if
21 you can stand talking about it anymore. You can talk about
22 the Grizzlies and who they need to draft and that sort of
23 thing.

24 You can talk about also -- my point of saying is
25 there are many things to talk about. You can talk about the

1 new museum that's going to be downtown. It will be the new
2 Brooks museum. It'll be renamed. It's going to be a really
3 wonderful thing.

4 But do not discuss the case. For all of you, I'm
5 going to let you be excused for this time, except for my four
6 jurors I'm holding on to for a few moments. I'll try to get
7 them free as soon as possible.

8 (Jury out at 12:22 p.m.)

9 THE COURT: I'm going to have juror in Seat 8
10 come around the side-bar. We can start a little early, and
11 we will, of course, put the background on.

12 (At side-bar on the record.)

13 THE COURT: All right. You have a lot of
14 experience. These people want to know about it. Tell us
15 about it. What's your job involve, but also where you work.
16 And you've been there eight years, and what your job was
17 before. And, you know, we've got a lot of knowledge.

18 PROSPECTIVE JUROR: I was a maintenance mechanic
19 for Shelby County. I still work at Shelby County. I did the
20 building maintenance on -- actually, the building that's
21 across the street, 201, 157, and 150. I did the maintenance
22 on those buildings before I became an electronic technician.
23 Prior to that, I worked the election commission.

24 THE COURT: The election commission?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And that was across the street here?

2 PROSPECTIVE JUROR: Yes. I programmed the voting
3 machines there.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR: I've been -- prior to that, I
6 was in the Air Force. I did electronics on the fighter jets.

7 THE COURT: And how long were you in the Air
8 Force?

9 PROSPECTIVE JUROR: I was in the Air Force for
10 four years.

11 THE COURT: Okay. Well, thank you. I was in the
12 Army, but it was a different time.

13 PROSPECTIVE JUROR: I've been at the prison now
14 going on eight years.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: And my job entails there, I
17 do security cameras. I do the -- some of the doors have
18 electronic locks on them --

19 THE COURT: Yeah.

20 PROSPECTIVE JUROR: -- and I work on those. I
21 don't have any contacts with the inmates.

22 THE COURT: That's what I was going to ask about.
23 I mean, I don't know how you avoid any contact.

24 PROSPECTIVE JUROR: Well, because of the nature
25 of my job, when I have to go in and work on a lock, they have

1 to clear the inmates so they don't see what I'm doing.

2 THE COURT: Okay. Because you don't want them to
3 be watching you.

4 PROSPECTIVE JUROR: They can't watch me and
5 figure out how to get out.

6 THE COURT: Right. Exactly.

7 PROSPECTIVE JUROR: And so when I go to work on
8 the locks, the inmates have to be -- they usually move them
9 to a different cell, or they have to get to the back of their
10 pod, or stay, whatever the case may be.

11 THE COURT: You have heard every possible story
12 as it relates to criminal conduct probably in your
13 experience. Not that you interact with inmates, but you do
14 work in a security environment.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And would it be fair to say that on
17 occasion, there are difficulties in which inmates are
18 involved, that is, altercations?

19 PROSPECTIVE JUROR: There are, but it really
20 doesn't affect me. I'm on the maintenance side.

21 THE COURT: Right.

22 PROSPECTIVE JUROR: The correctional officers --

23 THE COURT: Right.

24 PROSPECTIVE JUROR: -- have more experience with
25 that. But as I said, I don't have much interactions with the

1 inmates at all.

2 THE COURT: Do you have interaction with the
3 correctional officers?

4 PROSPECTIVE JUROR: I have interaction with the
5 correctional officers.

6 THE COURT: Do they tell you things about their
7 experiences?

8 PROSPECTIVE JUROR: Vaguely. Vaguely.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: They don't go into details
11 about what happened because of the nature of the, as they
12 say, where we work at.

13 THE COURT: Absolutely. Do you think that this
14 is a case that you should be sitting on? I don't know. Can
15 you do this job?

16 PROSPECTIVE JUROR: I feel that I can do this job
17 because, like I say, I will base my decision on solely the
18 evidence that was presented before me. I don't have any
19 preconceived notions whether the parties involved are
20 innocent or guilty.

21 THE COURT: The inmate population at Shelby
22 County correction Center varies a good bit, but should
23 typically be lower security level personnel. That's not
24 always true anymore. Used to be; is that right? Now it can
25 be anybody with any type of crime; is that right?

1 PROSPECTIVE JUROR: Well, they've -- in the last
2 couple of years, the population has changed. Like, we now
3 house federal inmates.

4 THE COURT: Yes, you do.

5 PROSPECTIVE JUROR: So it has changed since I've
6 been out there.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: Federal inmates are kept
9 separate from the state -- well, not the state, the county
10 inmates.

11 THE COURT: Okay. I'm going to let them ask you
12 some questions. I mean, if you -- any questions from the
13 United States?

14 MR. OLDHAM: No, Your Honor. Thank you.

15 THE COURT: Any questions from the first
16 defendant?

17 MR. BALLIN: No, Your Honor.

18 THE COURT: Any questions from second defendant?

19 MR. SCHOLL: No, Your Honor.

20 THE COURT: All right. Well, we're going to keep
21 you for a while. So if you think of something, you let me
22 know, okay?

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: Enjoy your lunch.

25 PROSPECTIVE JUROR: Thank you.

1 THE COURT: Absolutely.

2 PROSPECTIVE JUROR: What floor is that?

3 THE COURT: It's on the second floor.

4 PROSPECTIVE JUROR: Second floor.

5 THE COURT: Second floor.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Juror in Seat 10.

8 CASE MANAGER: Juror 28.

9 THE COURT: That's Juror 28.

10 Yes, ma'am. You had an occasion where there was
11 a threat at your company.

12 PROSPECTIVE JUROR: Uh-huh.

13 THE COURT: How long ago was that?

14 PROSPECTIVE JUROR: It hasn't gone to jury yet, I
15 don't think.

16 THE COURT: I'm sorry?

17 PROSPECTIVE JUROR: It's an active --

18 THE COURT: Active case?

19 PROSPECTIVE JUROR: Active case right now.

20 THE COURT: Are you a witness in connection with
21 that case?

22 PROSPECTIVE JUROR: No. We have multiple
23 witnesses.

24 THE COURT: I probably -- nobody can use this
25 information to look up anything on the Internet, but I am

1 going to need to ask which company this is.

2 PROSPECTIVE JUROR: It's REI Nation on Exeter
3 Road.

4 THE COURT: Okay. I am going to ask how many
5 employees are at that location, just to get a better feel for
6 what's going on there, what went on?

7 PROSPECTIVE JUROR: We have about 110. No, I'm
8 sorry, that's Dallas, Texas. I would say 75 and then another
9 150, total. We own the building.

10 THE COURT: Right.

11 PROSPECTIVE JUROR: And there's another company
12 that rents from us and then a doctor's office.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: So . . .

15 THE COURT: Now, tell us what happened in
16 connection with this threat situation.

17 PROSPECTIVE JUROR: Okay. So the employee was
18 fired, a disgruntled employee. He was escorted out to his
19 car. He got in his vehicle, turned it around, and we have a
20 curved driveway. He came through when the two employees were
21 out there, which is the human resource person and another
22 lady, two ladies.

23 The gentleman came around the curb to hit the
24 building to kill them, attempted murder. Went through our
25 building. Then the gentleman was in the car for a while. I

1 can't believe he even lived through that. He runs through
2 our office. At this time, all the employees were starting to
3 run out because we didn't know what was going on.

4 We have a second floor. He came up to the second
5 floor. He got in the elevator and when he did, we have a
6 glass awning that goes down to the eighth floor that we have,
7 like, desks or tables. He jumped from that second floor on
8 to the other one. He fell on top of the table and then
9 started -- I'm getting into gory details.

10 He tried to stab himself in his eyes with keys.
11 He was very -- we were all watching this from the second
12 floor because he was in the car for a long period of time.
13 He got out and went to the elevator, so I don't know if he
14 was knocked out. We don't know. But he had gone through our
15 building, so now we have security guards -- armed guards at
16 the doors.

17 THE COURT: How long ago was this event? Was it
18 six months, eight months?

19 PROSPECTIVE JUROR: Six months ago, maybe six
20 months ago. It could have been a little longer than that.

21 THE COURT: Did you know the person?

22 PROSPECTIVE JUROR: I just knew of him walking
23 through the building.

24 THE COURT: You did not know him personally?

25 PROSPECTIVE JUROR: No, he did not work for our

1 company. He worked for the other company, but he was running
2 the halls constantly.

3 THE COURT: Now, we need to know because that's
4 pretty traumatic. Would that in any way affect your ability
5 to sit on this jury and be fair and impartial?

6 PROSPECTIVE JUROR: I'm going to be honest. You
7 just asked me that question if we had been threatened or
8 something that's going on --

9 THE COURT: Sure, sure.

10 PROSPECTIVE JUROR: -- and that's just something
11 that's been very hard to deal with --

12 THE COURT: Sure.

13 PROSPECTIVE JUROR: -- especially when we have to
14 go to work now with armed guard.

15 THE COURT: Sure.

16 PROSPECTIVE: You have to be checked before you
17 come in. Honestly, I'm not going to be -- I didn't hear the
18 exact reason for the case. I mean, to know if I could answer
19 that correctly. Does that make sense? I mean, I don't -- I
20 mean, I listened to what you said, but then all I could
21 remember is cell phones, two people, date September --

22 THE COURT: Sure.

23 PROSPECTIVE JUROR: That's what I remember --

24 THE COURT: Sure.

25 PROSPECTIVE JUROR: -- of what you said at that

1 time.

2 THE COURT: Right. It's -- and I'm not saying
3 what happened to them because I don't know. Sometimes it's
4 referred to as a murder for hire case in which by use of a
5 cell phone, individuals, it's asserted, were contacted for
6 the purpose of carrying out the murder of an individual who
7 is identified as DH, and who will actually end up testifying
8 in this case. So it's not driving the car into a building.
9 It's not running on an elevator.

10 It's very different in nature, but also it
11 involves threats of violence. So you have to tell me that
12 you would be able to decide the case solely on the evidence
13 and the law, if you can, or -- I'm not sure I can because I
14 had this recent experience and it's hard to put out of my
15 mind, and I'm afraid I will be affected by it. I do not know
16 the answer to that.

17 PROSPECTIVE JUROR: I don't know if I would have
18 the answer to that. I just -- I mean, I don't feel like I
19 would be impartial or partial. This is a different case,
20 yes. It sticks with us every day when we have to go in the
21 office. But it's nothing that -- I can't answer that.

22 THE COURT: Nobody humanly, who is honest, can
23 say with absolute certainty something will never affect me,
24 but people can say, I believe I can do it. I'll make every
25 effort to do it. I intend to do it. And if I start to do

1 it, I'm going to -- you know, I will tell you, which you
2 can -- a person can say that. They can say, you know, Judge,
3 it turned out it wasn't something I can do.

4 So we let people -- we recognize humans are
5 humans. We don't expect people to be anything other than
6 human. But you have to tell me right now -- I mean, soon,
7 maybe not this minute, you know, do I think I can decide this
8 case solely on the evidence and the law and return the
9 verdict that the evidence and the law requires irrespective
10 of how the case comes out? In other words, I can -- can you
11 decide for the defendant or defendants? Can you decide for
12 Ms. Grayson if you decide, well, the Government didn't prove
13 it beyond a reasonable doubt?

14 PROSPECTIVE JUROR: Yes, I can.

15 THE COURT: Can you decide for Mr. Grayson if it
16 turns out the Government didn't prove what was necessary
17 beyond a reasonable doubt, what verdict would you return for
18 him? If the Government fails to prove its case beyond a
19 reasonable doubt, what verdict would you return for him?

20 If the Government fails to prove beyond a
21 reasonable doubt the facts necessary, your verdict would have
22 to be what? If they fail to prove beyond a reasonable doubt
23 the facts necessary to establish the crime charged, what
24 verdict would you have to return?

25 PROSPECTIVE JUROR: For the defendant or for

1 the --

2 THE COURT: There's only -- the -- it's either
3 guilty or not guilty. And if the Government fails to prove
4 beyond a reasonable doubt --

5 PROSPECTIVE JUROR: Then he's not guilty.

6 THE COURT: -- the facts necessary to establish
7 the crime charged, what verdict would you have to return?

8 PROSPECTIVE JUROR: Not guilty.

9 THE COURT: Would you even hesitate if that's the
10 case?

11 PROSPECTIVE JUROR: If you don't have enough
12 evidence, I mean, the evidence doesn't prove a hundred
13 percent, then, no.

14 THE COURT: Well, I'll tell you that's not the
15 standard exactly, but if it's not proven beyond a reasonable
16 doubt.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. All right. Now, of course, if
19 the Government does prove as to a defendant the facts
20 necessary to establish the facts necessary to establish the
21 crime charged, if the Government does prove that as to a
22 defendant, as to that defendant, what verdict would you have
23 to return? If the Government does prove it?

24 PROSPECTIVE JUROR: Then he's guilty.

25 THE COURT: Okay. The question is: Can you do

1 that in this case without being influenced by these events
2 that happened at your place of employment?

3 PROSPECTIVE JUROR: I feel very strongly that I
4 could. Yes.

5 THE COURT: Okay. Now, any questions by the
6 Government?

7 MR. OLDHAM: No, Your Honor.

8 THE COURT: Any questions by Defendant 1?

9 MR. BALLIN: Can I have one moment?

10 THE COURT: Sure.

11 MR. BALLIN: This event that occurred six months
12 or so ago, you witnessed -- you personally witnessed it?

13 PROSPECTIVE JUROR: When he jumped -- when we
14 were coming out of our offices, when he jumped and was on the
15 ground.

16 THE COURT: You have to come up closer to the
17 mike because the court reporter is having trouble hearing
18 you.

19 PROSPECTIVE JUROR: When he hit the building, no,
20 it was not outside.

21 MR. BALLIN: What part did you see?

22 PROSPECTIVE JUROR: What part did we see, when
23 he --

24 MR. BALLIN: What did you see?

25 PROSPECTIVE JUROR: Him on the table on the

1 ground.

2 THE COURT: And how did that make you feel?

3 PROSPECTIVE JUROR: Scared, but we were
4 running -- I mean, it was scared, I was very nervous, didn't
5 know what was happening, why did he do it.

6 MR. BALLIN: Did this guy have any mental health
7 issues that --

8 PROSPECTIVE JUROR: From what we found out later,
9 yes, he did. He was very unique, and he would always walk
10 around the office and everybody would just kind of go --
11 because he wouldn't say anything to anybody. So you can't
12 judge a book by its cover.

13 MR. BALLIN: I hear you.

14 PROSPECTIVE JUROR: But you see him in the hall
15 and, yes, I mean, he was very unique and a lot of people
16 would discuss him.

17 MR. BALLIN: Are you saying that you were scared?

18 PROSPECTIVE JUROR: Yes, I was scared.

19 MR. BALLIN: Are you going to have any feelings
20 in jury deliberations about this event? Are you going to
21 think about this event while you're deliberating on this
22 case?

23 PROSPECTIVE JUROR: Not to the same thing, am I?
24 I don't know if they're the exact same -- I think they're two
25 completely opposite issues.

1 MR. BALLIN: Okay. So you agree, no sympathy, no
2 prejudice, only evidence from the witness stand and the law
3 that the judge gives you, that's what you're going to use?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: This event that happened six months
6 or so ago, it's at your office, has nothing to do with this,
7 does it?

8 PROSPECTIVE JUROR: No, nothing at all.

9 THE COURT: Yes, sir?

10 MR. SCHOLL: Judge, it's a question not about
11 that but since we have her here, could I just ask her, what
12 do you do in client services?

13 THE COURT: Oh, fair.

14 PROSPECTIVE JUROR: Investors. We have -- we buy
15 homes from 11 different cities, 7,700 properties. We manage
16 all 11 cities, so I take care of the investors. I talk to
17 investors all day long on their properties, whether I'm doing
18 evictions or not paying rent.

19 MR. SCHOLL: You're like the liaison between your
20 company and the investors.

21 PROSPECTIVE JUROR: And, actually their parties,
22 I take care of them. I call them. I'm their eyes and ears
23 for their investments, and we have investors all the way from
24 Japan, Saudi Arabia, all over the place, all over.

25 MR. SCHOLL: Thank you.

1 THE COURT: Yes, sir. Last question.

2 MR. BALLIN: Thank you. The initials DH is
3 alleged to be a victim in this case, this person, the
4 initials DH. Based on what you personally witnessed, do you
5 think that that person, as we stand now, do you think that
6 person is a victim?

7 PROSPECTIVE JUROR: Not at this time, no. I
8 mean, I don't know anything about them. I mean --

9 MR. BALLIN: Based on your experience, will you
10 be able to decide this case without any sympathy for anybody,
11 including Ms. Grayson?

12 PROSPECTIVE JUROR: I have a big heart. I'm
13 going to be honest, I mean, I feel for people. I mean, you
14 want me to be honest right now, yes, I feel -- I have a heart
15 for a lot of things and a lot of people, but --

16 MR. BALLIN: If the judge tells you that sympathy
17 nor prejudice can enter into your deliberations, can you
18 follow that law?

19 PROSPECTIVE JUROR: Yes. He's the judge.

20 THE COURT: Okay. We need to let you get some
21 lunch.

22 PROSPECTIVE JUROR: Do you think I'm getting too
23 skinny because you hear my stomach roaring? I'll stop
24 talking, when you dismiss me.

25 THE COURT: No, we're going to keep you. We're

1 going to keep you on the panel.

2 PROSPECTIVE JUROR: No, I'm saying dismiss me to
3 go eat lunch.

4 THE COURT: Go eat lunch. Go eat lunch.
5 Absolutely. Thank you. No problem. No problem.

6 Juror in Seat 12, how are you doing?

7 PROSPECTIVE JUROR: Good. How are you?

8 THE COURT: I'm good.

9 PROSPECTIVE JUROR: Good.

10 THE COURT: We talked about threats because
11 that's a way to think about things here. Tell me about your
12 situation. I'm going to let you speak up just a little.

13 PROSPECTIVE JUROR: Okay. When you first
14 mentioned, you said, within a year, but then you said --

15 THE COURT: Well, it could really be any time.

16 PROSPECTIVE JUROR: Yes, and I said, maybe I
17 better say something. But it's been 14 years, and my nephew
18 was murdered by his wife's brother in Cordova, and he passed
19 away. And so the brother was incarcerated, and he passed
20 away while he was incarcerated. He didn't even serve out all
21 of his time. So there was some evidence of his wife getting
22 his brother to do the crime.

23 At first, he said she didn't, wasn't involved,
24 but his attorney let him know that if he was coerced and it
25 wasn't his idea, he wouldn't get as much time. But after he

1 kept saying she did it, then they didn't believe him, so --
2 but she ended up, there was a mistrial, and she ended up
3 going back to trial, and she took the plea bargain and got
4 less time, so --

5 THE COURT: I'm going to ask the obvious
6 question, which was: What was the name of the individual who
7 was murdered?

8 PROSPECTIVE JUROR: Fredrick Matting.

9 MR. OLDHAM: Your Honor, can we have a second
10 without the juror, please?

11 THE COURT: Sure. That's what I'm concerned
12 about.

13 Yes, ma'am. I tell you what --
14 I'm sorry?

15 MR. OLDHAM: That's my case, Your Honor. I tried
16 Ms. Patricia Matting --

17 THE COURT: Right.

18 MR. OLDHAM: -- who was the wife of Fredrick
19 Matting. Her brother was the person that actually killed
20 him. He took a plea deal and --

21 THE COURT: Right.

22 MR. OLDHAM: -- testified against her, so I don't
23 know if she remembers that or not. I don't even know if I
24 need to bring it up, but I just wanted to let the Court now.

25 THE COURT: I thought it might be important.

1 MR. OLDHAM: And it's been on -- there was a TV
2 show about it too.

3 THE COURT: There was a TV show about it.
4 Congratulations.

5 MR. OLDHAM: I was just trying to let you know.

6 THE COURT: No, no, I'm not disagreeing at all.
7 I think, though, she may well be able to be a juror in the
8 case, but I think it might be a little complicated, so let me
9 ask her one or two more questions unless you all want to let
10 her be excused at this time.

11 MR. BALLIN: I'm concerned that when Mr. Oldham
12 starts talking --

13 THE COURT: When he starts talking.

14 MR. BALLIN: -- she may remember.

15 THE COURT: When he starts talking, yes.

16 MR. SCHOLL: And then also, it's a little bit --
17 it's not exactly like this case, but very similar.

18 THE COURT: It's got some similarities. I don't
19 have a problem with that. Is there a motion or not?

20 MR. BALLIN: Yes.

21 MR. SCHOLL: I move to excuse.

22 THE COURT: Otherwise, I'd ask a couple more
23 questions. Both defense counsel move?

24 MR. OLDHAM: I have no objection to her being
25 dismissed.

1 THE COURT: I'm going to let her come back
2 around.

3 Yes, ma'am. You know, I really am going to
4 regret having to let you be excused in this case. That's a
5 little too close, don't you think? Maybe we need to let you
6 be excused. You have been a wonderful juror.

7 PROSPECTIVE JUROR: Thank you.

8 THE COURT: I'm going to miss you.

9 PROSPECTIVE JUROR: I wanted to tell the truth,
10 though.

11 THE COURT: You did exactly the right thing to
12 let me know about it and let them all know about it. We
13 really appreciate you being here, and also I really
14 appreciate your very thoughtful comments from the jury box.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: You still get to have a free lunch,
17 but then tell them when you get down there that you are being
18 excused in the case, so you won't have to come back up.

19 PROSPECTIVE JUROR: Okay. And where am I going?

20 THE COURT: You're going to the second floor.

21 PROSPECTIVE JUROR: Second floor, okay.

22 MR. BALLIN: Tell the jurors if they ask why
23 she's being excused, Your Honor?

24 THE COURT: No, no, no, you just say -- don't
25 ever tell them anything. It's just that, you know, I had a

1 side-bar, and I'm excused. That's it. They won't ask.

2 Don't add more information.

3 PROSPECTIVE JUROR: Okay. Thank you so much.

4 CASE MANAGER: This is Juror No. 14, Judge.

5 THE COURT: Yes, sir? How are you doing?

6 PROSPECTIVE JUROR: I'm fine. How about you?

7 THE COURT: I'm doing okay. I don't know about
8 the rest of these folks, but you and I are okay.

9 You need to see us at side-bar about -- go ahead.

10 Tell us about your situation.

11 PROSPECTIVE JUROR: Eliza Fletcher.

12 THE COURT: Right. Exactly. And I kind of
13 thought that's what you were going to say, but I think that
14 not everybody here has the same background as you or I or the
15 local -- or others.

16 PROSPECTIVE JUROR: Family is long-time friends
17 of our family. Her uncle, Mike Keeney, is next door to me
18 office-wise.

19 THE COURT: Oh, okay.

20 PROSPECTIVE JUROR: So, I'm -- yeah.

21 THE COURT: Are you going to be able to sit on
22 this case and be fair and impartial?

23 PROSPECTIVE JUROR: I brought that up just -- I
24 don't think that's a problem for me, no.

25 THE COURT: Okay. Now, you and I both know that

1 this is a tragic, tragic event that happens on Central Avenue
2 near -- I can't remember -- University of Memphis, and
3 absolutely terrible. And, of course, eventually, the -- a
4 defendant was apprehended and so forth. When these events
5 occurred, how closely did you follow the activity as to
6 Ms. Fletcher?

7 PROSPECTIVE JUROR: Pretty closely.

8 THE COURT: Okay. That was not the same type of
9 facts as are asserted in this case. It's really quite
10 different. But would that be on your mind if you were
11 deliberating in this case?

12 PROSPECTIVE JUROR: No. I mean, I don't -- in
13 the way you're asking the question, I don't think so, no.

14 THE COURT: Right. And what we really mean is
15 will it affect in any way your ability to decide the case
16 fairly and impartially?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Okay. Now, in the event that as to a
19 defendant or both defendants, the Government fails to prove
20 its case beyond a reasonable doubt, what verdict would you
21 have to return if they fail to prove their case?

22 PROSPECTIVE JUROR: Not guilty.

23 THE COURT: Would you have any hesitancy about
24 doing that if that's what the facts require?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. On the other hand, I do have
2 to ask the flip side of that. If the Government does prove
3 its case beyond a reasonable doubt as to a defendant, as to
4 that defendant, what verdict would you have to return?

5 PROSPECTIVE JUROR: Guilty.

6 THE COURT: Okay. Would you be embarrassed or
7 anything about how the verdict that you return might affect
8 others that you know, including friends that you know, if you
9 decided that the case was one in which a not guilty verdict
10 was required?

11 PROSPECTIVE JUROR: That's a good question. I
12 haven't even thought about that.

13 THE COURT: We always have to think about will we
14 feel like, I've got to go back and somebody is going to say
15 something to me and my friend, who sits near me, is going to
16 say, why in the world did you do that? Now, I'm not saying
17 that would happen at all. But you have to think about it,
18 and say, I can make a decision based only on the evidence and
19 the law and will not be affected by my concern about what
20 anybody else might think about that.

21 PROSPECTIVE JUROR: No. That wouldn't be a
22 problem.

23 THE COURT: Okay. Questions?

24 MR. OLDHAM: No, Your Honor. Thank you.

25 MR. BALLIN: That includes Mr. Keeney's

1 brothers-in-law?

2 PROSPECTIVE JUROR: Yes.

3 MR. SCHOLL: Do you work with her uncle?

4 PROSPECTIVE JUROR: No.

5 MR. SCHOLL: Where do you work?

6 PROSPECTIVE JUROR: I run the investment
7 business.

8 MR. SCHOLL: Investment business?

9 PROSPECTIVE JUROR: Yes. They actually work at
10 the headquarters.

11 MR. SCHOLL: He stays there at that office, but
12 he does some stuff --okay. So you do investment business?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Okay. Anything else?

15 PROSPECTIVE JUROR: I don't know if I'm supposed
16 to bring this up or not.

17 THE COURT: It won't hurt. Nothing you can say
18 is inappropriate.

19 PROSPECTIVE JUROR: My firm does business with
20 Mr. Ballin's firm.

21 THE COURT: Well, the main question is do they
22 pay their bills? No, I'm saying that in light of this, do
23 you think that would affect you in any way in deciding this
24 case?

25 PROSPECTIVE JUROR: No, but I thought I should

1 bring it up.

2 THE COURT: Oh, you should absolutely tell us
3 about it. And I think I know what kind of business, but tell
4 me what kind of business you do with the Ballin firm.

5 PROSPECTIVE JUROR: I'm in the money management
6 business, and we manage money for Mr. Ballin.

7 THE COURT: Okay. Are you going to feel like
8 you've got to decide for Mr. Ballin and his client because
9 you have a business relationship with Mr. Ballin?

10 PROSPECTIVE JUROR: No, it doesn't -- I don't see
11 that as a problem, no. I just thought I should bring it up.

12 THE COURT: Okay. Government questions?

13 MR. OLDHAM: Is that your only client?

14 PROSPECTIVE JUROR: Thank goodness, no.

15 THE COURT: That's a fair question, though,
16 because if it was Berkshire Hathaway, and that was your only
17 client, you know, that would really put you in a difficult
18 situation.

19 I think the question -- I'm going to just add one
20 thing there, and I don't want to put you in a bad light here,
21 but I assume that Mr. Ballin's representation, while
22 important, is less than 10 percent of the portfolio that you
23 oversee?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay. And you can ask a follow-up if

1 you'd like.

2 MR. OLDHAM: That was the nature of the question,
3 Your Honor, and that was going to be a similar follow-up,
4 that what impact it would have to know how it weighed on his
5 decision-making, if it weighed on his decision-making at all,
6 which I trust him when he says it does not.

7 THE COURT: Okay. Yes, sir.

8 MR. BALLIN: Do you understand that we're not
9 going to pull our business from you regardless of what your
10 decision is?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. Well, I think that -- I think
13 it's important.

14 MR. BALLIN: That's a very fair question.

15 THE COURT: That's a very fair question and
16 certainly appropriate to say that.

17 Yes, sir?

18 MR. SCHOLL: I don't have any questions, Judge.

19 THE COURT: All right. We need to let you try to
20 get your lunch. We have to try to get our lunches, and we
21 have to work very hard to get back on schedule. So thank you
22 very much.

23 Okay. Now, anything else that we need to do? I
24 think, you know, we're going through this process. This will
25 take a little bit of time. We'll get through the first row,

1 and we'll be getting fairly close to preliminary or initial
2 strikes. If there's a cause strike, I want to make sure
3 everybody understands this, cause strikes have to be raised
4 as they occur. They are not raised -- and they've been --
5 that's what we've been doing. But they are not then raised
6 at the last minute. They are raised as they occur, so we can
7 fill the panel. Okay. That's it.

8 MR. SCHOLL: Can we talk for just one second,
9 Judge?

10 THE COURT: Sure. I'm going to actually go back
11 on the regular part of the record.

12 (End of discussion at side-bar.)

13 THE COURT: We don't have anybody else here, so
14 we can do it from the regular mikes, and you can come around
15 to the big podium if you want.

16 MR. SCHOLL: Judge, if I may, on the last juror
17 that we had, No. 29 seated in Seat 15 -- I'm sorry.

18 Judge, I'm asking with regards to Juror No. 29
19 seated in Seat 14, you know, we had a sort of similar
20 situation with Mr. Oldham trying the case that was involving
21 the lady whose, I guess it was her nephew was a victim. I
22 just think the relationship with Mr. Ballin and this juror is
23 just way too close. Not to say that anything improper would
24 go with Mr. Ballin. I know that would never happen. But as
25 far as making this a clean record, we've got a room full of

1 jurors that don't have financial and business relationships
2 with lawyers here. And I just think that, when --

3 THE COURT: This is a motion by Defendant 2 by
4 Mr. Grayson.

5 MR. SCHOLL: Mr. Grayson.

6 THE COURT: To excuse Juror No. 29 in Seat 14.

7 MR. SCHOLL: Yes, sir, motion to strike for
8 cause, Your Honor, based on that close relationship. I just
9 don't think -- one, I just don't think --

10 THE COURT: Let's see what the Government says.
11 They may not disagree.

12 MR. OLDHAM: I believe Mr. Scholl is right.
13 That's the reason why we have so many people, and I think
14 that he -- he said a couple of things that might make it hard
15 for him. And when we do have other people who would have no
16 relationships, that makes sense that the Government has no
17 objection.

18 THE COURT: Without objection, I'm going to make
19 sure there's nothing from Ms. Grayson's counsel that counters
20 that, but that sounds like that might be a good idea.

21 MR. BALLIN: Nothing to add, Your Honor. And no
22 objection to what Mr. Scholl and Mr. Oldham have requested.

23 THE COURT: Good idea. We'll just go ahead and
24 excuse juror in Seat 14. That's No. 029, and he is excused
25 in the matter.

1 When we come back, we will need to fill Seats 12
2 and 14, and then, of course, we have a series of questions
3 for the front row. Okay.

4 We need to let everybody be excused because we're
5 going to be tight on lunch for all of you. And I think
6 everybody understood that we do have to keep moving.

7 Anything else, then? Without anything else,
8 we're going to take our break at this time.

9 MR. BALLIN: Your Honor, what time do you want us
10 back?

11 THE COURT: We said we would come back at -- what
12 time, Mr. Sample?

13 CASE MANAGER: 1:35, Your Honor.

14 THE COURT: 1:35. We'll see you at 1:35.

15 MR. BALLIN: We have lunch at my office, which is
16 on Jefferson.

17 THE COURT: May need to bring lunch over, if they
18 can. That would be much preferred. And if you need to, they
19 can -- you can eat in the witness room. I don't think
20 there's anybody in there. Well, I don't know who is in there
21 now or not. And that might be a lot more efficient. Do you
22 think it'll be more efficient?

23 MR. BALLIN: I'll ask somebody to bring it over.

24 THE COURT: If they bring it over real quickly,
25 that would help you out. We'll help you out in that regard.

1 Anything else?

2 MR. OLDHAM: No, Your Honor.

3 THE COURT: Okay. Thank you.

4 Mr. Scholl, are they going to bring lunch for you
5 or they left you out?

6 MR. SCHOLL: They offered, Your Honor. I packed
7 my own lunch today.

8 THE COURT: Good idea. Thank you.

9 We'll let everybody be excused.

10 (A recess was taken from 12:56 p.m. to 1:37 p.m.)

11 MR. OLDHAM: United States wanted to report
12 something to the Court. We didn't see it; however, there are
13 two witnesses who were here today who had an interaction or
14 involvement with a third party. The third party is known to
15 defense and United States alike. Her name is Sherrell Hodge.
16 She was in the parking lot filming telling whoever was
17 watching her social media, their car is here, and then
18 interacted with our witnesses when they were on their way to
19 lunch and had an interaction, and then posted that on social
20 media.

21 I don't think it rises to witness tampering;
22 however, she was then sitting out in front of the courtroom
23 with potential jurors. We have asked -- she's not a witness
24 in our case. She's not a victim in our case. However, we
25 did ask our witness coordinator to bring her around to the

1 jury room so that we can tell her, even though she's not
2 our -- like our said, our witness or our victim, how her
3 interactions could affect the trial and/or the jury pool and
4 warn her or admonish her that her behavior in that regard
5 should cease.

6 We just got this information. We haven't been
7 able to pass along that message and, frankly, wanted to make
8 defense counsel aware and the Court aware before we took any
9 action.

10 THE COURT: All right. Any thoughts from counsel
11 opposite?

12 MR. PALMER: Your Honor, thank you for bringing
13 that to our attention. As we were walking out to go
14 downstairs to get something to drink, she immediately started
15 calling out to Ms. Grayson and Mr. Grayson. I didn't know
16 who she was until they alerted me, and she sounded like she
17 was trying to cause trouble, was waving.

18 There was a juror sitting next to her, and there
19 was a younger female to her right, and I didn't realize -- I
20 did tell the CSO that was out there that this woman looked
21 like she was here to cause trouble and that he needs to keep
22 an eye on her. He kind of understood she's whispering. But
23 she is -- it looks like she's here to disrupt the process.

24 While I appreciate the United States cautioning
25 her as to her behavior, it seems like this is going to get

1 worse before it gets better. I don't know if that
2 conversation is going to have any effect on this woman. She
3 lives two miles from my office. She's from Texas. She is --
4 she touches in concern of that case, the original
5 investigation, so she is -- she is a witness in the case, but
6 not into the case that's going to be presented in this
7 courtroom.

8 But the investigation, this woman is part of the
9 case in that regard. I don't want to go into too much
10 detail, Your Honor, but she's here, I believe to be as much
11 trouble as she can make without getting arrested. But
12 anything the Court can do -- we don't know at this point how
13 much damage has been done. There was a juror who -- I didn't
14 get her number. Does anybody else --

15 MR. LEVINE: Juror No. 55, Your Honor.

16 MR. PALMER: Was sitting next to her when she was
17 calling out Ashley and Josh's name and waving at pretty much
18 our team, and we did our best to ignore her and then went
19 down the elevator.

20 MR. LEVINE: If I may clarify very briefly. I
21 saw Juror 55 when we came back up, so I don't know if that
22 was the same juror that she was sitting next to. I remember
23 that she was seen next to her when we went down, so it could
24 be more than one juror, Your Honor.

25 THE COURT: Okay. First of all, what we can do,

1 one, we may not get that person, but I do need to ask if
2 any -- I will ask if anyone has attempted to speak with you
3 and if they have, you will need to tell me even if you're in
4 the gallery. I don't want to spend forever on that sort of
5 subject because it can delay us and, frankly, might not be
6 productive. But we'll check on that.

7 Also, in order to limit the ability -- the
8 necessity of defendants going to any other floor, what we
9 will check on -- and, Jeff, we need to check on this right
10 now -- is putting you in the judge's conference room on this
11 floor, and just don't go anywhere else. Just go -- just have
12 lunch there. There's a restroom there. You know, it's a
13 nice room, pretty nice room.

14 And so, therefore, you won't be going on the
15 elevators because we need to keep you away from people who
16 are, one, bothering you, and, secondly, people who might
17 cause a problem in the trial itself. So that's something
18 we're checking on right now and see if we can't move to that
19 situation.

20 I think we must have everybody here. Hopefully,
21 we do. I think we must. Just checking back there. Is that
22 Mr. Pirtle back there? He's so far away. How did he get so
23 far away?

24 Yes, sir?

25 MR. SCHOLL: Judge, I didn't want to speak on

1 that just yet, but --

2 THE COURT: She wants you on the mike because if
3 you don't get on the mike, you're going to have a really
4 funny looking record. It's going to say, Mr. Scholl was
5 attempting to speak.

6 MR. SCHOLL: I was trying to speak, Judge. I
7 didn't get an option to just a second ago. But this is the
8 thing I was warning about when we addressed about the court
9 the first time. I'm concerned with what this lady may have
10 gotten or has she gotten to the jurors in the parking lot or
11 anything before we came in and if that has caused any damage
12 or irreparable damage to our jurors as we have it now. That
13 was my biggest concern. I did run into Juror Number --
14 sitting in Seat 2 on the elevator, but I got off on the
15 floor -- I think on Floor 5 when I saw them and took another
16 elevator.

17 THE COURT: Sure.

18 MR. SCHOLL: We didn't speak.

19 THE COURT: I think that what we were hearing
20 from Mr. Palmer at the very -- at one point was that he had
21 had sort of an innocuous exposure to somebody but no
22 substantive contact.

23 MR. PALMER: That's correct, Your Honor. The
24 juror would be Juror No. 14 -- I'm sorry, Seat No. 14.

25 THE COURT: Sure. So I think we're doing what we

1 should do. I think we just need to bring the panel in.
2 We'll go ahead and replace Jurors 12 -- in Seat 12 and 14,
3 which are Jurors, I think, 66 and 29, and they will be
4 replaced. And then ask a few questions there, and then we'll
5 come back to Jurors 1 through 7 and Seats 1 through 7. And
6 then we'll move as fast as we can. Thank you.

7 We're ready to bring the panel in. We'll let
8 everybody get to their seats. Wilt Gibbons is here. I don't
9 think he could possibly be seated in this case. Is there any
10 reason not to excuse him?

11 MR. SCHOLL: No, Your Honor.

12 THE COURT: Any reason not to excuse him?

13 MR. BALLIN: Mr. Gibbons?

14 THE COURT: Yes.

15 MR. BALLIN: It's Junior.

16 THE COURT: Yes.

17 MR. BALLIN: Let me tell him who he is.

18 THE COURT: Sure, okay. Fine.

19 MR. BALLIN: Your Honor, may we approach briefly?

20 THE COURT: Sure.

21 (At side-bar on the record.)

22 MR. BALLIN: We have no objection to letting
23 Mr. Gibbons be excused.

24 THE COURT: Sure. We ought to let him be
25 excused. I mean, if you can't see it, but I can see it that

1 he would be unlikely to be called anyway. And, you know, a
2 lawyer can sit here for a little while, but there's no real
3 possibility that he's going to be on the jury since his
4 mother is on the Court of Appeals, and district trial -- he
5 now works for the City in the City Attorney's Office.

6 MR. OLDHAM: When he was with the City's
7 Attorney's Office, he was assigned to the gang unit with the
8 D.A.'s Office, and he and I worked closely together.

9 THE COURT: Ane we, absolutely -- it just
10 wouldn't be possible for him to sit on the panel. By
11 unanimous agreement, we're just going to let him be excused
12 at this time. Okay. Thank you.

13 (End of discussion at side-bar.)

14 THE COURT: All right. Well, during the period,
15 we did excuse at least one juror, and we're actually going to
16 let our Juror 29 be excused in the case. That's juror in
17 Seat 14, so we appreciate you being here very much. Thank
18 you so much.

19 In connection with Mr. Gibbons, who is here, we
20 chit-chatted about that at side-bar, and we should actually
21 let you be excused in the case. So we appreciate you being
22 here. There may be somebody else on the panel that we need
23 to be -- let them be excused at this time.

24 I need to caution all of you that you need to
25 avoid people you don't know and not sit next to anybody who

1 is attempting to have any interaction with any party in the
2 case. That is a problem. If that has occurred and you are
3 called as a potential juror, you are to tell me about that
4 very promptly, and we will discuss that.

5 I'm not saying you've done anything wrong. I'm
6 saying that we don't want anybody exposed to individuals that
7 you should not be exposed to. So there may be at least one
8 or two people that might have had that experience.

9 Now, you all made it through lunch. We're going
10 to call someone to take Seat 12 and Seat 14 at this time.

11 CASE MANAGER: Your Honor, that's 0023.

12 THE COURT: That would be Seat 12.

13 CASE MANAGER: And 0050, No. 50.

14 THE COURT: Now, if we call somebody and they
15 know they already need to see me at side-bar, then you need
16 to tell me so. So our juror in Seat 12, new juror in Seat
17 12, and we've got at least one in Seat 14.

18 And, Seat 12, do we need to see you at side-bar?
19 Are we okay? Or are you okay?

20 I know in Seat -- I'm going to let juror in Seat
21 14, that's Juror 50, come around to the side-bar.

22 (At side-bar on the record.)

23 THE COURT: All right. How are you doing?

24 PROSPECTIVE JUROR: I'm okay.

25 THE COURT: You're going to have to -- you can

1 speak up pretty well. That's good.

2 PROSPECTIVE JUROR: I won't be able to be fair
3 because my brother got murdered last year. And the guy that
4 killed him, he hasn't even been to trial. This will be too
5 much for me. I know I'm not going to be able to deal with
6 that, to be fair.

7 THE COURT: Okay. Well, that's terrible. And
8 was that here in the city of Memphis?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Okay. I am going to ask: Was he
11 your younger brother?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: How old was he at the time?

14 PROSPECTIVE JUROR: Thirty-eight.

15 THE COURT: Okay. Was anybody apprehended in
16 connection with his killing?

17 PROSPECTIVE JUROR: Yeah, they got him. He in
18 jail now, but he hasn't been to trial yet.

19 THE COURT: It's in state court, of course.
20 Well, under those circumstances, do you feel that because
21 this is -- of course, this is different, but it's a -- the
22 charge is murder for hire. We're not saying anybody got
23 killed. Do you think it would be difficult if not impossible
24 for you to sit on a jury and be fair and impartial?

25 PROSPECTIVE JUROR: It's going to be difficult.

1 I'm going to be honest.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: It's going to be very
4 difficult for me.

5 THE COURT: We understand that.

6 I'm going to just ask: Any problem in allowing
7 Juror 50 to be excused? We're so sorry about that.

8 MR. OLDHAM: No.

9 MR. BALLIN: No problem.

10 PROSPECTIVE JUROR: I'm just being honest.

11 THE COURT: No. Thank you so much. I'm so sorry
12 about that.

13 PROSPECTIVE JUROR: Okay. Thank you.

14 THE COURT: You take care.

15 PROSPECTIVE JUROR: Okay. Thank you.

16 THE COURT: And juror in Seat 12. I saw you out
17 there earlier. Yes, ma'am?

18 PROSPECTIVE JUROR: Yes, I feel like I might be
19 really bias because I've had tragedy in my family before.

20 MR. OLDHAM: I'm sorry.

21 THE COURT: I'm sorry, go ahead. You might be
22 bias because you've had tragedy in the family before.

23 PROSPECTIVE JUROR: I don't know how I might
24 react.

25 THE COURT: Let me ask this: Tell me what you

1 mean by events in the family, and I think we understand
2 but tell me what you mean.

3 PROSPECTIVE JUROR: Someone murdered before. And
4 then they never found who did it, you know.

5 THE COURT: How long ago was that?

6 PROSPECTIVE JUROR: It's been a while. It's been
7 over ten years, but, you know, by it being unresolved, you
8 know, it's just -- I have a -- I'm kind of emotional like.
9 I'm an emotional person.

10 THE COURT: I always tell people, it's not my job
11 to make jurors cry, and I'm not going to do that. I
12 understand. I am going to ask: Was this a younger brother
13 or older brother?

14 PROSPECTIVE JUROR: It was actually a cousin.

15 THE COURT: A cousin. Okay. I'm sorry, a
16 cousin. And I am going to ask: Were you satisfied or
17 dissatisfied with the police work on that case?

18 PROSPECTIVE JUROR: Dissatisfied.

19 THE COURT: Okay. You were close to your cousin.

20 PROSPECTIVE JUROR: Yes, very close.

21 THE COURT: How would that affect your -- you in
22 this case? Would it cause you to be thinking about what
23 happened to your cousin as you were trying to make a
24 decision?

25 PROSPECTIVE JUROR: I do. I really do because

1 I'm a sensitive person. I'm pretty sensitive, and being at
2 the same time, I could lean either way to be honest with you,
3 you know. I have empathy on both ends, you know. And I
4 think that would lead me to be indecisive, you know, not
5 knowing --

6 THE COURT: You would be conflicted by the fact
7 that --

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: -- your cousin had been murdered --

10 PROSPECTIVE JUROR: Yes. And then --

11 THE COURT: -- and that would make it very hard
12 to make a decision in this case.

13 PROSPECTIVE JUROR: Yes. And then at the same
14 time, I have compassion from the other end, you know, just --
15 I don't even know how to say it. I'm a people person, but I
16 love people. And I just -- I have empathy on both sides.
17 You know, it doesn't make any sense.

18 THE COURT: Do you think you should be excused?

19 PROSPECTIVE JUROR: I do because I'm not sure --
20 I don't want to be a hold out on, you know, like --

21 THE COURT: It would be hard for you to
22 deliberate, is that it? I mean, would it be hard for you
23 to -- would this event with your cousin be some much on your
24 mind that you would find it hard to function as a juror?

25 PROSPECTIVE JUROR: Yeah, I do. I do.

1 THE COURT: Questions from the Government?

2 MR. OLDHAM: No questions, Your Honor.

3 MR. BALLIN: If I could, Your Honor?

4 THE COURT: Sure.

5 MR. BALLIN: This is a trial, and you understand
6 there is no easy button that anybody can push?

7 PROSPECTIVE JUROR: Yes.

8 MR. BALLIN: And you take your position as a
9 potential juror as a hard job?

10 PROSPECTIVE JUROR: Yes.

11 MR. BALLIN: Do you agree that the way our system
12 works that an accused is entitled to a jury of his or her
13 peers?

14 PROSPECTIVE JUROR: I do.

15 THE COURT: That means a cross-section of
16 everybody in the community.

17 PROSPECTIVE JUROR: I do.

18 MR. BALLIN: You'd agree, people like you, people
19 dissimilar to you?

20 PROSPECTIVE JUROR: Right. I do.

21 MR. BALLIN: If the judge instructs you that
22 sympathy nor prejudice should enter into your decision-making
23 process, can you follow that law?

24 PROSPECTIVE JUROR: I want to say I could, yeah.
25 I think I could.

1 MR. BALLIN: If the judge --

2 THE COURT: What else were you going to say?

3 PROSPECTIVE JUROR: That's what I was going to
4 say. I think that I could, but I'm so emotional, I don't
5 know if I -- I will do it, but it might be a rough road.

6 MR. BALLIN: We appreciate that. If the judge
7 instructs you that Ms. Grayson is entitled to a presumption
8 of innocence, can you follow that law?

9 PROSPECTIVE JUROR: Yeah, I can.

10 THE COURT: If the judge tells you that the
11 burden of proof is on the Government to prove otherwise, that
12 is, to prove her guilt beyond a reasonable doubt, can you
13 follow that law?

14 PROSPECTIVE JUROR: Yeah.

15 MR. BALLIN: Even though I hear you saying that
16 your job will be hard, are you willing to do it?

17 PROSPECTIVE JUROR: I don't know. I don't know.
18 It's tough. I can do it, but I don't know if I could do it
19 without emotion.

20 MR. BALLIN: That's okay. You can use your
21 common sense.

22 PROSPECTIVE JUROR: I know. I know.

23 MR. BALLIN: You can use the evidence. And you
24 can decide this case based on what you think the decision
25 would be. Can you do that?

1 PROSPECTIVE JUROR: I could, yes.

2 THE COURT: And in your deliberation, do you
3 understand that the decision of the jury has to be a
4 unanimous decision?

5 PROSPECTIVE JUROR: That's where I have a --

6 MR. BALLIN: That's not a problem. That's a good
7 thing. That's a good thing. Okay. And you're entitled to
8 your decision even if you're in the minority. Do you
9 understand that?

10 PROSPECTIVE JUROR: Yes.

11 MR. BALLIN: Okay. That's a good thing. Don't
12 feel bad about it.

13 THE COURT: Yes, sir?

14 MR. SCHOLL: No questions from me, Your Honor.

15 THE COURT: Questions by the Government?

16 MR. OLDHAM: You keep -- when we talk about
17 deliberations, is that where you're thinking ahead and having
18 an issue?

19 PROSPECTIVE JUROR: Yeah. And then as well as
20 listening to potential testimonies and stuff that may
21 trigger.

22 MR. OLDHAM: Let's break those down.

23 First, the testimony may trigger what?

24 PROSPECTIVE JUROR: Say that again.

25 MR. OLDHAM: The testimony, what might it

1 trigger? You say it may trigger what?

2 PROSPECTIVE JUROR: Feelings and emotions from
3 the past.

4 MR. OLDHAM: Is that because of your experience
5 from your family or just, in general, having feelings and
6 emotions about the things you hear?

7 PROSPECTIVE JUROR: Both.

8 THE COURT: Okay. Now, would you agree that
9 everybody has feelings and emotions they have to deal with
10 every day?

11 PROSPECTIVE JUROR: Yeah, I do.

12 MR. OLDHAM: Okay. So let's just focus on your
13 family situation and your cousin. What do you think will
14 happen if, during this testimony when you say you're going to
15 be triggered, what do you think is going to happen?

16 PROSPECTIVE JUROR: I might shed a tear or two,
17 you know, something like that. That's what I mean by that.

18 MR. OLDHAM: Okay. Now --

19 PROSPECTIVE JUROR: But I'm -- you know, I'm
20 stable as far as -- you know, I --

21 MR. OLDHAM: When you go back to deliberate, and
22 all the jurors have to say -- they have to talk about the
23 case, they have to listen to each other, will you be able to
24 participate in that process, speak with other people, listen
25 and express your opinion?

1 PROSPECTIVE JUROR: Yes, but sometimes, I am kind
2 of loud. I talk loud. I'm talking low now the best I can,
3 but I kind of talk loud because I'm country. But that's how
4 I was raised up, you know. We didn't have no phones and all.
5 We hollered across the road, so I'm kind of loud.

6 MR. OLDHAM: Well, we're bringing different
7 people in for different reasons, okay? So you being loud,
8 that's just you, right?

9 PROSPECTIVE JUROR: Yes.

10 MR. OLDHAM: What about your cousin's death and
11 nobody ever getting caught? What do you think that's going
12 to do to you when you go back to that jury room to talk to
13 the other jurors about this case?

14 PROSPECTIVE JUROR: Again, just emotional, but I
15 understand whatever. You know, I understand. It just would
16 bring back --

17 MR. OLDHAM: Emotional where you cannot talk and
18 make a decision or emotional where this will be hard, but I
19 can get through it? because that's the nature of it. Can
20 you get through those emotions, or will you become so
21 emotional, you won't be able to decide what happened in this
22 case?

23 PROSPECTIVE JUROR: Honestly -- I could -- I
24 just -- to be honest with you, I don't know how I would
25 react, but I do know that I can -- I'm stronger than I seem,

1 but it's just emotional.

2 THE COURT: Let me ask you a question: Tell them
3 what you do for a living.

4 PROSPECTIVE JUROR: Right now?

5 THE COURT: Yeah.

6 PROSPECTIVE JUROR: Right now, I am -- I work for
7 Sam's Club at the moment. Mostly entrance and exit greeting
8 people and all of that nature, so I see a lot of stuff. You
9 meet a lot of people.

10 THE COURT: So if I went to a Sam's Club, would
11 you be the greeter?

12 PROSPECTIVE JUROR: It's possible.

13 THE COURT: Might be. Okay.

14 All right. Do you like that?

15 PROSPECTIVE JUROR: I do. I do. I like it for
16 the most part.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: The job itself, I like. I
19 just don't like when it's time to get off work.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: They leave you at the door.

22 THE COURT: I understand. I understand.

23 PROSPECTIVE JUROR: But other than that, I do
24 like it.

25 THE COURT: What I'm going to do is this, I'm

1 going to talk to the lawyers, but I'm going to let you go
2 back to your seat over there. Think about it. You know, it
3 is not good for either side if somebody determines that they
4 will simply not be able to decide anything because sometimes
5 that happens. We've had jurors that that's just too hard,
6 and they just couldn't do it. At the same time, if you say,
7 you know, I may be a little emotional, but I'll be able to
8 listen to the evidence and decide the case solely on the law.
9 Will you think about that?

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: I'm going to ask you this: If, as to
12 Ms. Grayson, the Government proves its case beyond a
13 reasonable doubt, what verdict would you have to return?

14 PROSPECTIVE JUROR: If they prove their case,
15 guilty.

16 THE COURT: And if they fail to do that, then
17 what verdict would you have to return?

18 PROSPECTIVE JUROR: Not guilty.

19 THE COURT: And the same thing as to Mr. Grayson,
20 if the Government proves its case, beyond a reasonable doubt,
21 what verdict would you have to return?

22 PROSPECTIVE JUROR: Guilty.

23 THE COURT: And if they fail to do that, what
24 verdict would you have to return?

25 PROSPECTIVE JUROR: Not guilty.

1 THE COURT: Okay. I understand. If people
2 raising their hand and saying they wanted to be on the jury,
3 I would be worried about it. You understand what I'm saying?
4 So we want jurors who can listen and then decide the case
5 solely on the evidence and the law.

6 So I think we're okay. There may be some other
7 questions I need to ask you, but for right now, I'm going to
8 let you go back to your seat. Right now, I'm going to check
9 with the lawyers about it, okay?

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: Okay. Thank you.

12 All right. I think we need to talk about this
13 for a moment. And the main thing that you can't see or can't
14 hear on the record is her expression and the way in which she
15 is responding, which is, at times, takes her a while to
16 respond as she should, very thoughtfully, and somewhat
17 emotionally. So they can't see that on the record. You all
18 have to think about it. Would she be able to sit on the jury
19 and be fair and impartial?

20 Now, we do not want to try this case and get to
21 the end of the day and not have a -- have a juror who says, I
22 can't do it, I can't do it.

23 Now, we will keep two alternates and, of course,
24 we could replace the juror at that time if we had. We may
25 find out a little more later.

1 Anyway, anything from the Government at this
2 time?

3 MR. OLDHAM: The Government would like that she
4 be stricken for cause because of her reluctance to commit to
5 saying it wasn't, I guess I can do it. It was always several
6 qualifying statements before she would get to that, and feel
7 that with the venire we have, we should be allowed to have
8 somebody else who can give a more definite answer to that
9 very critical question.

10 MR. BALLIN: Your Honor, I humbly would like to
11 address the pause in some of her answers. But when I say
12 pause between the question and the answer, I submit to you
13 it's more of her thinking about her answer.

14 THE COURT: I think the Court gets to make a
15 decision about what we observed, and I hear what you're
16 saying. A little reluctant responses. I think
17 characterization is not entirely incorrect, but it's also not
18 entirely correct.

19 MR. BALLIN: And then also she did say she could
20 follow the law. I can. I can.

21 THE COURT: I'm going to keep her on the panel
22 for right now.

23 Yes, sir?

24 MR. SCHOLL: I would object to striking her,
25 Judge.

1 THE COURT: I'm going to keep her on the panel
2 for right now. She's got some time to think about it, and
3 then it may turn out that we need to let her be excused.
4 Right now, I'm going to deny the motion. Of course, I'm
5 aware that we might have an issue.

6 (End of discussion at side-bar.)

7 THE COURT: All right. We have another seat to
8 fill, which is Seat No. 14. Let's call somebody for that
9 seat.

10 CASE MANAGER: 0072.

11 THE COURT: All right. Do you need to see me at
12 side-bar or are you okay over there?

13 PROSPECTIVE JUROR: No, I'm okay.

14 THE COURT: All right. We have a couple of new
15 jurors. I'm going to ask a couple of fairly quick questions.

16 First of all, Juror 72 in Seat 14, I am going to
17 ask what you do, what's your regular work? We're not trying
18 to get real specific, but we need some idea.

19 PROSPECTIVE JUROR: I sell commercial food
20 service equipment. I do bid work and -- for correctional
21 facilities, hospitals, schools, things like that.

22 THE COURT: Okay. All right. May I ask for whom
23 you work or is it your proprietorship?

24 PROSPECTIVE JUROR: No. I work for Hotel &
25 Restaurant Supply.

1 THE COURT: And if somebody wants to start a
2 restaurant, you're the people they call up, right?

3 PROSPECTIVE JUROR: Technically, not me. If you
4 want a piece of equipment to bid on for school, things like
5 that, but I don't design, no.

6 THE COURT: Okay. All right. But your --
7 actually, the business that you're in and the company you're
8 with has a very substantial business here in town with all
9 sorts of supplies?

10 PROSPECTIVE JUROR: Correct. Yes, sir.

11 THE COURT: Absolutely. I'm going to ask you
12 what is the best below counter refrigerator three-door in --
13 that you've got available?

14 PROSPECTIVE JUROR: Probably True.

15 THE COURT: Okay. It's T-R-U-E.

16 PROSPECTIVE JUROR: T-R-U-E.

17 THE COURT: That's a really good one, absolutely.
18 And it's popular with a lot of places because they can use
19 that top counter space.

20 PROSPECTIVE JUROR: Correct.

21 THE COURT: Absolutely. How long have you been
22 doing that?

23 PROSPECTIVE JUROR: Going on 15 years.

24 THE COURT: Okay. How many?

25 PROSPECTIVE JUROR: Fifteen.

1 THE COURT: Fifteen years, my goodness. Okay.
2 Absolutely.

3 Well, what's the most important characteristic
4 for somebody who is going to serve on a jury?

5 PROSPECTIVE JUROR: Impartial.

6 THE COURT: Be impartial, absolutely. I thought
7 you were going to say be patient, right? Impartial.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Okay. Absolutely. You've heard all
10 the questions that have been asked. Do you feel better about
11 the ability of the jury to perform its duty after hearing the
12 way in which we go through jury selection?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: I'm going to ask you, why? Why do
15 you feel better about it?

16 PROSPECTIVE JUROR: I don't know. I mean, it's
17 the process, I guess.

18 THE COURT: Okay. It's a process that helps us
19 understand what we're supposed to do and what we cannot do.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Absolutely. Absolutely.

22 Well, we're going to go back to juror in Seat 12,
23 and I'm going to ask her, and she's going to tell me: What's
24 the most important characteristic for somebody who is going
25 to serve on a jury?

1 PROSPECTIVE JUROR: To be honest and fair.

2 THE COURT: Be honest and fair, absolutely. I
3 know we had a fairly long conversation and thanks for that
4 information. That's very helpful. And I'm going to ask you
5 again so that the jury knows what you currently do. I think
6 it's very interesting.

7 PROSPECTIVE JUROR: Mostly, I'm a greeter.
8 Sometimes cashier for Sam's Club.

9 THE COURT: Okay. I asked you to tell us that
10 because when they go into the Sam's Club and they see you, I
11 want them to say hello, okay?

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: Absolutely. I'm going to ask you
14 this, though, should I ask when I go into the Sam's Club and
15 I can't find what I'm looking for, should I come back and ask
16 you where it is?

17 PROSPECTIVE JUROR: Well, you can do that, or ask
18 any of the associates.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: Or go to the service desk.

21 THE COURT: Okay. I always --

22 PROSPECTIVE JUROR: -- member services.

23 THE COURT: I always wanted to have an app where
24 I could put it in and it would tell me exactly. Maybe there
25 is one.

1 PROSPECTIVE JUROR: There is.

2 THE COURT: Good.

3 PROSPECTIVE JUROR: Yes, you can download the
4 Sam's app.

5 THE COURT: Absolutely.

6 PROSPECTIVE JUROR: And you can find a lot of
7 things on there.

8 THE COURT: Absolutely.

9 In every case, we not only know that you have to
10 be impartial, but you also have to be aware of what biases
11 and prejudices might be. What's an example as to which
12 people sometimes have a bias or prejudice?

13 PROSPECTIVE JUROR: I would say something that
14 they possibly have experienced in their life.

15 THE COURT: Experiences in their -- absolutely.
16 That tends to affect us, and it tends to affect how we look
17 at things, absolutely.

18 If someone in the panel were to bring up a factor
19 that we cannot consider, and I'm not -- everybody needs to
20 think about this. For example, they said, I had a relative
21 who had something really bad happen to them and they were
22 killed and, therefore, I feel very strongly about how this
23 case should be resolved one way or the other, would that be
24 appropriate for them to tell us that?

25 PROSPECTIVE JUROR: No, it wouldn't.

1 THE COURT: It would not be. And would you be
2 willing to speak up and say something to them about that?
3 Would you be willing to speak up and then what might you say
4 to them?

5 PROSPECTIVE JUROR: Oh --

6 THE COURT: You said you weren't -- didn't mind
7 being outspoken.

8 PROSPECTIVE JUROR: I know and that's what I'm
9 trying not to do. I said, no, no, no, you can't do that,
10 that's not right. No, we ain't going there.

11 THE COURT: It's all right. It's all right. We
12 all have to have an understanding that it's appropriate to
13 speak up if something is brought up. We can't use our past
14 experience to decide any of disputed facts in this case. Is
15 that okay?

16 PROSPECTIVE JUROR: It's okay. It's just
17 sometimes when I speak up, it's misunderstood.

18 THE COURT: Well, you said that you were -- have
19 an authoritative voice.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: When you speak up and you tell those
22 people, you can't come in this door, you got to go to the
23 next door, or go get your basket, you expect them to go do
24 it, right?

25 PROSPECTIVE JUROR: No, I don't be telling them

1 like that. I be telling them with a smile. I say, help me
2 out, help me out, help me keep my little job. Go on and
3 do -- no, no.

4 THE COURT: Okay. Okay. We want to make sure
5 we've got the right tone here. Okay.

6 PROSPECTIVE JUROR: Oh, yeah.

7 THE COURT: The reason I'm asking is we don't
8 want anybody to feel like that they can't speak up and
9 sometimes -- is anybody on the jury a little hard of hearing?
10 You don't have to raise your hand, but sometimes people
11 appreciate that. So that's okay. Is that all right?

12 PROSPECTIVE JUROR: Yes, I think that's one of my
13 problems, maybe one -- another one of my problems is the
14 reason why I'm so loud.

15 THE COURT: You have a little difficulty in
16 hearing?

17 PROSPECTIVE JUROR: My husband thinks so.

18 THE COURT: Well, that's not a diagnosis, but you
19 bring up a great point to all of you, and that is, if you're
20 having difficulty hearing, and you're a little concerned
21 about missing things, we actually have hearing assistance
22 devices. And we can actually give you -- it kind of fits
23 over you. It's kind of like a -- looks like a necklace a
24 little bit and fits in your ears, and we can help you out.
25 So don't hesitate if you're having trouble hearing. Is that

1 okay?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Now, I'm not going to -- we're going
4 to go back to our jurors in Seats 1, 2, 3, 4, 5, 6, and 7. I
5 think -- well, let me make sure.

6 We've asked everybody about -- on the second row,
7 except maybe our juror in Seat 14, about the nature of the
8 case. And would it in any way affect your ability to sit on
9 the case and be fair and impartial? I want to make sure I've
10 covered that with juror in Seat 14 before I come down to Seat
11 1.

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay. Well, that's pretty
14 straightforward.

15 Have you had any situation where someone has
16 threatened you or a member of your family with physical harm?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Okay. All right. Thank you.

19 Now, we come back to Seat 1. They've been
20 waiting on us all this time. And that is, I do need to ask
21 all of you because we've got to that other -- now, I'm not
22 leaving out the other questions. They're all important, but
23 we recognize that we've covered a lot of material.

24 So does knowing the nature of the case, the
25 allegations in the case, affect in any way your ability to

1 decide the case solely on the evidence and the law?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Have you had any situation
4 where you, a family member, or close friend has been
5 threatened with physical harm?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Okay.

8 I'm going to hand that to juror in Seat No. 2.

9 Anything about the nature of the case -- be sure that you all
10 think about this. I know you are thinking about it, but we
11 really need to be mindful that it's quite important.

12 Anything about the nature of the case that would
13 in any way affect your ability to sit on the jury and be fair
14 and impartial, that is, to decide the case solely on the
15 evidence and the law?

16 PROSPECTIVE JUROR: No, Your Honor.

17 THE COURT: Any situation where you, a member of
18 your family, close friend has been threatened with serious
19 bodily harm?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Now, I'm going to put that
22 down as a side-bar because that's what we do on those. Okay.

23 All right. Juror in Seat No. 3, of course, we
24 haven't got to talk to you as much, a little bit, but not too
25 much. Remind me again exactly what you do. You told me, but

1 I want to remember what your job is.

2 PROSPECTIVE JUROR: Now I work at Pfizer.

3 THE COURT: Right. Exactly.

4 And anything about the nature of the case that
5 might in any way affect your ability to sit on the jury and
6 be fair and impartial?

7 PROSPECTIVE JUROR: No.

8 Anybody in the family, good friend, yourself has
9 been threatened with serious bodily harm by anybody?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: I'm going to do that on side-bar.
12 It's better to do it that way.

13 Okay. And, No. 4, Seat 4, how are you doing
14 today?

15 PROSPECTIVE JUROR: I'm all right.

16 THE COURT: You want to be here, or do you want
17 to be somewhere else?

18 PROSPECTIVE JUROR: I always want to be somewhere
19 else no matter where I'm at, so . . .

20 THE COURT: I understand. I understand.

21 Anything about the nature of the case that might
22 in any way affect your ability to decide the case solely on
23 the evidence and the law, anything at all?

24 PROSPECTIVE JUROR: Honestly, I'm not 100 percent
25 sure.

1 THE COURT: Okay. And I'm actually going to do a
2 side-bar on that because I think we probably need to. Would
3 you think we probably ought to talk about it?

4 PROSPECTIVE JUROR: (Moving head up and down.)

5 THE COURT: I think we need to, so we will take
6 care of that. I know we're going to have a bunch of
7 side-bars, but it's more fair to everybody.

8 All right. Juror in Seat No. 5, anything about
9 the nature of the case that might in any way affect your
10 ability to decide the case solely on the evidence and the
11 law?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Anybody -- you're including yourself,
14 family, friends, and so forth who has been threatened by
15 anybody with serious bodily harm?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. Let's go to No. 6, juror in
18 Seat 6. Anything about the nature of the case that might in
19 any way affect your ability to sit on the jury and be fair
20 and impartial?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Anybody in the family or yourself or
23 close friend, who has been threatened by anyone with serious
24 bodily harm?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. And in Seat No. 7, anything
2 about the nature of the case that might in any way affect
3 your ability to sit on the jury and be fair and impartial,
4 that is, to decide the case solely on the evidence and the
5 law?

6 PROSPECTIVE JUROR: No.

7 THE COURT: And anyone in -- have you or any
8 member of your family, close friend, who has been threatened
9 by anyone with serious bodily harm?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Okay. All right.

12 All right. We've got some side-bars. We're
13 going to take juror in Seat No. 2 first on this one.

14 (At side-bar on the record.)

15 THE COURT: Okay. Yes, sir. What happened?

16 PROSPECTIVE JUROR: Well, I've been robbed at
17 gunpoint, so that implies --

18 THE COURT: That's pretty threatening.

19 PROSPECTIVE JUROR: Yes, sir. And I also had a
20 friend that was murdered about 20 years ago.

21 THE COURT: Twenty years ago?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Okay. How long ago was the robbery?

24 PROSPECTIVE JUROR: About 15. Fifteen or so.

25 THE COURT: As to the friend who was killed, how

1 long -- I'm sorry, was that person a relative or close
2 friend?

3 PROSPECTIVE JUROR: He was a friend. You may
4 have heard about it. He was the pizza delivery guy in
5 Cooper-Young that got killed, John Stambaugh.

6 THE COURT: He was a pizza delivery guy, exactly.

7 PROSPECTIVE JUROR: Yes. Yes, sir.

8 THE COURT: That was a terrible event. Does that
9 in any way affect your ability to sit on this jury and be
10 fair and impartial?

11 PROSPECTIVE JUROR: No, sir. I understand the
12 material conditions are probably involved in both of those
13 incidents, and it doesn't really affect --

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: -- this case or anything
16 else. That's unfortunate, but crime happens.

17 THE COURT: Let's go to the situation where you
18 were robbed. Where did that occur?

19 PROSPECTIVE JUROR: Half a block from the house.

20 THE COURT: And what part of the city was that
21 in?

22 PROSPECTIVE JUROR: That was on Jackson Avenue.

23 THE COURT: Okay. Was anybody apprehended in
24 connection with that robbery?

25 PROSPECTIVE JUROR: I doubt it.

1 THE COURT: Did you notify the police when it
2 occurred?

3 PROSPECTIVE JUROR: I called them after I got
4 home.

5 THE COURT: Okay. How much money was taken?

6 PROSPECTIVE JUROR: Couple of bucks, couple of
7 tallboys of beer, and a sack of potato chips.

8 THE COURT: Okay. That's not too bad.

9 PROSPECTIVE JUROR: Not too bad.

10 THE COURT: Which intersection on Jackson?

11 PROSPECTIVE JUROR: Jackson and Belvedere.

12 THE COURT: Okay. Now, being robbed is something
13 that is pretty traumatic. How traumatic was it for you? You
14 seem to have done pretty well with it, but I can't tell.

15 PROSPECTIVE JUROR: Yeah, it's -- I mean, if you
16 live long enough in Memphis, it's going to happen eventually.

17 THE COURT: Okay. Do either of those predispose
18 you in any way as to how you should decide this case?

19 PROSPECTIVE JUROR: No, Your Honor.

20 THE COURT: If the Government fails to prove its
21 case beyond a reasonable doubt as to a defendant, what
22 verdict would you have to return as to that defendant?

23 PROSPECTIVE JUROR: Fail to prove, not guilty.

24 THE COURT: Okay. If they do prove the case
25 beyond a reasonable doubt as to a defendant, as to that

1 defendant, what verdict would you have to return?

2 PROSPECTIVE JUROR: It would have to be guilty.

3 THE COURT: Okay. Can you keep an open mind
4 until the very end of this?

5 PROSPECTIVE JUROR: Absolutely.

6 THE COURT: You told me you were in your -- how
7 old are you?

8 PROSPECTIVE JUROR: I'm 44.

9 THE COURT: I made a note about that, and I
10 thought, well, that's -- you still look young, so that's a
11 good thing.

12 PROSPECTIVE JUROR: I appreciate that.

13 THE COURT: Absolutely. Absolutely. Anything
14 else you need to tell us about? I think that covers it.

15 PROSPECTIVE JUROR: I don't think so. Other than
16 I think I've met your daughter before, but that's about it.

17 THE COURT: Which one?

18 PROSPECTIVE JUROR: Kate.

19 THE COURT: Sure.

20 PROSPECTIVE JUROR: My best friend is Zack Payne,
21 I think he's -- Brian was friends with her.

22 THE COURT: Is he a doctor now?

23 PROSPECTIVE JUROR: He's a doctor down in
24 Pensacola.

25 THE COURT: Do you ever see him?

1 PROSPECTIVE JUROR: Every once in a while.

2 THE COURT: Exactly. Exactly. I want to make
3 sure you were not one of those kids who came over to my house
4 when I was asleep.

5 PROSPECTIVE JUROR: I don't think so.

6 THE COURT: Okay. I used to have kids come over
7 way past my bedtime.

8 Okay. Was that going to influence you at all in
9 this case?

10 PROSPECTIVE JUROR: I don't believe so.

11 THE COURT: Tell them how long ago that was. It
12 actually was quite a while ago.

13 PROSPECTIVE JUROR: About 20 years ago.

14 THE COURT: It would be about 20 years ago. It
15 would be a long time ago, absolutely.

16 All right. Any questions from the Government?

17 MR. OLDHAM: No, Your Honor.

18 THE COURT: Any questions from defense?

19 MR. BALLIN: My daughter played basketball
20 against Judge McCalla's daughter years ago.

21 Do you know my daughter, Jana.

22 PROSPECTIVE JUROR: I don't --

23 MR. BALLIN: Jana Ballin?

24 PROSPECTIVE JUROR: I don't know. If I do, it's
25 just in passing. There's a chance we were at the same party.

1 THE COURT: Probably.

2 MR. BALLIN: Where did you go to high school?

3 PROSPECTIVE JUROR: I went to Bolton. I didn't
4 meet that group until I was in -- went to CBU, so I met Zack
5 there and his, brother, his younger brother, and that's how I
6 met them.

7 THE COURT: You didn't take the agricultural
8 course at Bolton High School, did you?

9 PROSPECTIVE JUROR: No. It was an agriculture
10 high school, but I did not.

11 THE COURT: But you did not?

12 PROSPECTIVE JUROR: No. I was a skate boarder,
13 not a rodeo guy.

14 THE COURT: No problem. Rodeo is actually a
15 really big deal.

16 PROSPECTIVE JUROR: It is.

17 THE COURT: It's a big deal.

18 MR. SCHOLL: I don't have any questions about any
19 of my kids, so you're done.

20 THE COURT: We appreciate you coming up. Thanks
21 very much.

22 Seat No. 3. Yes, sir?

23 PROSPECTIVE JUROR: My stepdaughter was involved
24 in a shooting. Her ex-boyfriend broke into the house and
25 broke into it again. She shot him. She didn't kill him. It

1 might be better if she would have. But the lawyer we had was
2 Mr. Ballin here, so I would probably pick him over anybody
3 else. I would probably take his side. I would probably be
4 bias because I would take him because he helped my family and
5 got her taken care of, so --

6 THE COURT: That sounds pretty clear to me. How
7 did he do in the case?

8 PROSPECTIVE JUROR: She was let go of jail and
9 all charges dropped.

10 THE COURT: That sounds like a favorable
11 determination.

12 Well, Mr. Ballin, any objection to letting --

13 MR. BALLIN: No, sir.

14 THE COURT: Anything from the Government?

15 MR. OLDHAM: No.

16 THE COURT: That's what I needed to know,
17 exactly.

18 MR. SCHOLL: We'll keep him, Judge.

19 THE COURT: You know when you have that close
20 relationship and how important it was to the family, and it
21 was very important to the family at the time.

22 PROSPECTIVE JUROR: For sure, it was.

23 THE COURT: She was probably initially charged
24 with at least manslaughter.

25 PROSPECTIVE JUROR: Yes. But she didn't -- she

1 shot him -- well, she went outside and shot him. She
2 didn't -- because he ran around the back and got in his car.
3 She went in front of him and shot him. She was not where she
4 was supposed to be.

5 THE COURT: Exactly.

6 PROSPECTIVE JUROR: And she got all the charges
7 taken off, so . . .

8 THE COURT: Okay. Well, it helps us to have that
9 context, and so you feel an obligation.

10 PROSPECTIVE JUROR: Right.

11 THE COURT: We need to let you be excused.
12 There's no objection by anybody and thanks for being here.

13 PROSPECTIVE JUROR: Sorry about that.

14 THE COURT: Absolutely. No problem. Thank you.

15 PROSPECTIVE JUROR: Thank you.

16 MR. OLDHAM: Thank you for letting us know.

17 THE COURT: I'm not going to ask how you got --
18 that's a pretty good result. I know.

19 MR. BALLIN: I don't remember.

20 THE COURT: I understand. You know, he remembers
21 you, and that's a big deal. Maybe Blake handled part of it.

22 MR. BALLIN: Good result, he probably did.

23 THE COURT: Probably did.

24 Juror in Seat 4. Juror in Seat 4.

25 By the way, she's having some type of emotional

1 issue, so I need to be very kind, but I will need to ask
2 about that. So I'll ask her about it.

3 MR. BALLIN: Also the drive.

4 THE COURT: Yeah, she does have a long drive.

5 MR. SCHOLL: I'll sit here and be quiet. That's
6 been my role.

7 THE COURT: How are you doing? I've been
8 watching you. You've been real upset. I know you're crying
9 a little bit. Do we need to --

10 PROSPECTIVE JUROR: This is reminding me of when
11 my son messed up.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: And I don't know if I can
14 really listen to all the evidence when I've got that going on
15 in my head.

16 THE COURT: Sure. I'm going to ask you just one
17 or two questions. What happened in your son's case?

18 PROSPECTIVE JUROR: He got rape charges for
19 messing with his little cousin, and he has to go do the --
20 he's on a registry now.

21 THE COURT: Sure.

22 PROSPECTIVE JUROR: And it's just I never got no
23 therapy for it or nothing, and I know I probably need to, but
24 I've been doing a pretty good job of pushing it down and
25 avoiding courtrooms until now.

1 THE COURT: Let me ask this because --

2 PROSPECTIVE JUROR: I just had to stay at home
3 constantly for the past two years.

4 THE COURT: You've been staying home really for
5 the whole time?

6 PROSPECTIVE JUROR: Just about, except sometimes
7 I go to my daddy's house.

8 THE COURT: Sure. You've had a really terrible
9 situation, and it stays with you all the time; is that right?

10 PROSPECTIVE JUROR: It really does.

11 THE COURT: Do you need to be excused in this
12 case? Is this simply impractical and impossible for you to
13 sit in the case? Is it that hard?

14 PROSPECTIVE JUROR: It's going to be really hard
15 for me to concentrate on what's going on and really focus the
16 way that I should, the way that the defendants probably
17 deserve somebody to.

18 THE COURT: I understand. You live in Lauderdale
19 County?

20 PROSPECTIVE JUROR: (Moving head up and down.)

21 THE COURT: Where in Lauderdale?

22 PROSPECTIVE JUROR: Almost to Halls.

23 THE COURT: Almost to Halls. Okay. I think the
24 lawyers are fine with understanding your situation, but I'm
25 going to ask them. So I'm going to ask you to sit in that

1 chair right over there. If you'll have a seat just for a
2 moment, and we're going to check on it.

3 MR. LEVINE: May I be excused? I left my jury
4 list in that room.

5 THE COURT: Sure. That's fine. Go ahead.

6 Obviously, she can't serve. She's highly
7 emotional. She's crying. She's, you know, been at her house
8 for the last two years hardly able to come out. Does
9 anybody -- I mean, is there a joint motion by all three of
10 you to let her be excused?

11 MR. BALLIN: On behalf of Ms. Grayson, we move
12 that she be excused for cause.

13 MR. SCHOLL: I would join on, on behalf of
14 Mr. Grayson.

15 MR. OLDHAM: Government joins as well.

16 THE COURT: We need to let her be excused. Thank
17 you all very much.

18 We need to let you go home, and we're going to
19 let you be excused.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: And so never forget, though, now,
22 there are some counseling services that might be able to
23 help, so we're always -- we can't do a lot from the federal
24 side, but we can always make some suggestions because I know
25 that if that would help, we will do what we can. You take

1 care. Okay. We're going to let you go -- go down to the
2 second floor, and tell them you've been excused.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: Thank you.

5 Juror in Seat 5, I think. Maybe I don't need to
6 see her, but . . .

7 CASE MANAGER: I didn't mark anybody else.

8 THE COURT: I didn't mark anybody else either.

9 Okay. I think we're good.

10 (End of discussion at side-bar.)

11 THE COURT: All right. Well, we have two seats
12 to fill here in Seats 3 and 4. We're going to call those
13 numbers.

14 CASE MANAGER: Your Honor, the next juror will be
15 0059, Juror 59.

16 And the next number is 0005, Juror No. 5.

17 THE COURT: Okay. 0005 in Seat 4 and 0059 in
18 Seat 3.

19 All right. Well, let me start with juror in Seat
20 No. 3. How are you doing today?

21 PROSPECTIVE JUROR: (Inaudible.)

22 THE COURT: I'm doing okay. We'll get that mike
23 to you, though. That's what we need to work on there.
24 Absolutely. Absolutely.

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Now, are you retired now?

2 PROSPECTIVE JUROR: Yes, I am.

3 THE COURT: Okay. That's a good thing. And tell
4 me what you did before you retired?

5 PROSPECTIVE JUROR: Truck driver.

6 THE COURT: Truck driver? That's what I thought
7 was right. Now, I'm going to ask you what it was like being
8 a truck driver when you were driving a truck?

9 PROSPECTIVE JUROR: Peace of mind for me.

10 THE COURT: Peace of mind, absolutely. How long
11 did you do that?

12 PROSPECTIVE JUROR: Fifteen years.

13 THE COURT: And what size rig did you -- was it
14 an 18 wheeler?

15 PROSPECTIVE JUROR: No, sir. It was a tandem.
16 It was a dump truck.

17 THE COURT: Okay. And was that hauling gravel?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. And was that in the north part
20 of the county?

21 PROSPECTIVE JUROR: City of Memphis.

22 THE COURT: City of Memphis? Okay. And people
23 don't realize this, but there's a pretty large gravel yard,
24 pit, et cetera, in the city of Memphis itself; is that right?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Okay. Do you want to tell them the
2 quality of the gravel there?

3 PROSPECTIVE JUROR: I did it all.

4 THE COURT: Exactly. Now, in this case, what
5 would you say is the most important characteristic for a
6 juror, the most important characteristic?

7 PROSPECTIVE JUROR: I really can't say right now.
8 My head ain't together on what to say.

9 THE COURT: I tell you what, can we talk briefly
10 at side-bar about that? Is that okay? I want to make sure
11 you're okay.

12 PROSPECTIVE JUROR: I'm okay.

13 THE COURT: All right. Come around. I want to
14 check one thing. I'm checking on hearing.

15 PROSPECTIVE JUROR: Yeah.

16 THE COURT: And that's what I need to know is how
17 well you can --

18 PROSPECTIVE JUROR: I don't hear good out of my
19 right ear.

20 THE COURT: Okay. Tell me again.

21 PROSPECTIVE JUROR: I can't hear good out of my
22 right ear.

23 THE COURT: Okay. Difficulty hearing out of your
24 right ear. Did you hear me say earlier that we have a
25 hearing assistance device if we need one?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: It is very important that you be able
3 to hear everything that is said in the courtroom. Will you
4 tell me if you would like one?

5 PROSPECTIVE JUROR: Yes, sir, I would.

6 THE COURT: Okay. Because it's just not -- it's
7 the right thing to do. It's not good to not be able to hear
8 okay. Well, wanted to check on that.

9 Now, what would you say -- because you drove a
10 truck for a long time, what would you say is the most
11 difficult thing about driving a truck?

12 PROSPECTIVE JUROR: The most difficult thing?

13 THE COURT: About driving -- of course, you were
14 driving a dump truck.

15 PROSPECTIVE JUROR: Yes, I was.

16 THE COURT: And there's a lot -- people may not
17 realize this, there is actually quite a lot of noise usually
18 at the gravel pit area.

19 PROSPECTIVE JUROR: At the landfill, yes, sir.

20 THE COURT: Yes, there is, exactly. What's the
21 most difficult thing about driving -- because it's a big
22 piece of equipment?

23 PROSPECTIVE JUROR: It was -- to me, my difficult
24 part was the pedestrians just driving on the street with me,
25 and I have -- I be hauling a lot of debris and, like, that

1 would be my biggest problem is trying to drive and make sure
2 they not right up on me for no debris to come off on.

3 THE COURT: And, actually, there's a law that
4 deals with how you have to cover the dump truck.

5 PROSPECTIVE JUROR: We have a cover, right.

6 THE COURT: And if the cover is not on the truck,
7 what can happen?

8 PROSPECTIVE JUROR: The debris could come off --

9 THE COURT: Right.

10 PROSPECTIVE JUROR: -- and hit the car.

11 THE COURT: And that's a pretty serious thing --

12 PROSPECTIVE JUROR: Right.

13 THE COURT: -- actually.

14 Now, can you decide -- what would you say is an
15 example of something as to which people sometimes have a bias
16 or prejudice? It's a charact- -- it's No. 2, an example of
17 a characteristic as to which people sometimes have a bias or
18 prejudice?

19 PROSPECTIVE JUROR: Right now, I can't say. It
20 just won't come to me right now.

21 THE COURT: Well, let me ask it this way: Do you
22 think that sometimes people judge people on the way that they
23 appear on their looks?

24 PROSPECTIVE JUROR: Some people do, but, no.

25 THE COURT: Not everybody.

1 PROSPECTIVE JUROR: I don't because I focus on
2 peoples a lot due to the fact that I worked with the public a
3 lot too, so I would always focus on people's heart. You
4 know, sometimes they will say, why you looking at me so hard?
5 I'm not looking at you hard. I'm really focusing on you, you
6 know, your ways around me.

7 THE COURT: If in this case, the Government fails
8 to prove its case as to a defendant beyond a reasonable
9 doubt, what verdict would you have to return? If they fail
10 to prove the case beyond a reasonable doubt?

11 PROSPECTIVE JUROR: You're asking for my judgment
12 of it?

13 THE COURT: Well, and the jury too. What verdict
14 would the jury have to return if the Government fails to
15 prove its case as to a defendant beyond a reasonable doubt?

16 PROSPECTIVE JUROR: Well, I really -- I have to
17 think about that myself because the way I think, it may not
18 be right.

19 THE COURT: Okay. Well, let me hand that over to
20 your colleague right next to you. He's in Seat No. 4.

21 And you want to tell them what do you do now?

22 PROSPECTIVE JUROR: I am a musician.

23 THE COURT: And do you operate out of one of
24 studios here in Memphis?

25 PROSPECTIVE JUROR: I have my own studio, but I

1 do for hire work with studios around town.

2 THE COURT: I've always been surprised at how
3 much it cost to rent a studio fully equipped for an hour or a
4 day. Do you want to tell us or is that a secret?

5 PROSPECTIVE JUROR: Well, no, it's not a secret,
6 but I couldn't say I know everyone's rates around the nation
7 and what have you. And I agree that it is expensive. That's
8 why I invested in my own facility, a modest one.

9 THE COURT: The equipment is expensive. The
10 setup is expensive. The acoustics are expensive. And so
11 some people will rent the studio for an hour, occasionally.
12 Some for a day. Ever had anybody rent it for two weeks?

13 PROSPECTIVE JUROR: Mine is not really for hire.

14 THE COURT: That's a long time because that's got
15 a -- that's a totally different -- that's what we're --
16 absolutely. So what is your musical specialty? What do you
17 play?

18 PROSPECTIVE JUROR: I play drums, piano, and
19 bass.

20 THE COURT: Okay. Who is the most famous person
21 you've ever had recorded?

22 PROSPECTIVE JUROR: I didn't get to any famous
23 people. Oumou Sangare.

24 THE COURT: Okay. Did they lease it -- did they
25 rent it for a full day?

1 PROSPECTIVE JUROR: No. They wanted me to work
2 directly with them.

3 THE COURT: They did? Okay. Are you also an
4 editor?

5 PROSPECTIVE JUROR: Yeah. I do recording
6 engineering, all that as well.

7 THE COURT: It sounds -- no, is this -- you own
8 the whole studio?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay. Is it a secret where it is or
11 should we not tell them? Maybe we shouldn't tell them.

12 PROSPECTIVE JUROR: Well, it's more a privacy
13 thing.

14 THE COURT: No, I agree. We're not going to ask
15 too much there. Okay. Absolutely. Have you been on any
16 record labels yourself?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. What do you think is the most
19 difficult task the jury has in this case?

20 PROSPECTIVE JUROR: Which question is that?

21 THE COURT: The most difficult task the jury has.
22 It's not up there. I just asked another one.

23 PROSPECTIVE JUROR: Oh, deciding whether --
24 coming to agreement, about what is presented in evidence.

25 THE COURT: Yeah, thoughtfully deliberating and

1 trying to reach a verdict, absolutely. Absolutely.

2 In your business, what is the effect of someone
3 who is not careful about the use of the equipment?

4 PROSPECTIVE JUROR: They can damage the
5 equipment. They can get electrical shocks and all kind of
6 things like that.

7 THE COURT: And will they be asked -- or will
8 they allowed to continue to rent it if they're not handling
9 it correctly?

10 PROSPECTIVE JUROR: Well, we're not a for rent
11 facility, so we don't encounter that much.

12 THE COURT: Okay. You don't really rent it as a
13 facility?

14 PROSPECTIVE JUROR: No. It's a private facility.

15 THE COURT: Even for an hour?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Oh, okay. That's what I didn't
18 understand earlier.

19 PROSPECTIVE JUROR: Yeah, I pretty much keep it
20 full with my own projects.

21 THE COURT: Okay. Exactly.

22 PROSPECTIVE JUROR: But I probably do need to
23 confer with you about past incidents.

24 THE COURT: Will you come around please, and
25 we'll talk about it.

1 (At side-bar on the record.)

2 THE COURT: Yes, sir. Drums, piano --

3 PROSPECTIVE JUROR: And bass.

4 THE COURT: And bass. Okay. So you can
5 really -- that's a lot.

6 PROSPECTIVE JUROR: Yeah, it took me a long time.

7 THE COURT: What do you need to tell me?

8 PROSPECTIVE JUROR: I had an incident of violence
9 from my father pulled a gun on me when I was 15. I tried to
10 intervene in an altercation between he and my mother.

11 THE COURT: What happened?

12 PROSPECTIVE JUROR: He -- I guess he just felt
13 that I was trying to intervene, and he pulled a gun and put
14 it in my face.

15 THE COURT: Okay. Were you able to protect your
16 mom or not?

17 PROSPECTIVE JUROR: Not. I was kind of frozen
18 after that.

19 THE COURT: You were a 15-year-old.

20 PROSPECTIVE JUROR: Fifteen, yeah.

21 THE COURT: What happened after that? Did your
22 dad stay around or did he --

23 PROSPECTIVE JUROR: I think that was the final
24 straw for my mother where she was enduring things happening
25 to her, but anything happening to the children, I think that

1 was the straw that broke the camel's back.

2 THE COURT: That's important for us to know
3 about. Did you feel like that your mother was protected by
4 the police? Did she call them?

5 PROSPECTIVE JUROR: She did. My father was a
6 police officer.

7 THE COURT: Oh, my. Okay.

8 PROSPECTIVE JUROR: And his brother was a
9 detective.

10 THE COURT: Was your mother physically injured on
11 more than one occasion?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Were you hurt on more than one
14 occasion?

15 PROSPECTIVE JUROR: No.

16 THE COURT: How many brothers and sisters did you
17 have?

18 PROSPECTIVE JUROR: I had four brothers.

19 THE COURT: Were you the oldest?

20 PROSPECTIVE JUROR: I was next to the older.

21 THE COURT: Next to the oldest. What happened to
22 any of the children in this situation? Anybody get hurt?
23 Anybody of the children get hurt?

24 PROSPECTIVE JUROR: No. I was the only one
25 present of the children.

1 THE COURT: Okay. Do you know what kind of gun
2 it was?

3 PROSPECTIVE JUROR: I don't know. Maybe whatever
4 they -- a standard issue for police officers.

5 THE COURT: Sure.

6 PROSPECTIVE JUROR: I don't know.

7 THE COURT: Absolutely. Does that cause this --
8 this is going to be a case in which law enforcement personnel
9 are going to testify. Now, I don't think there's going to be
10 any MPD presence at all, Memphis Police Department at all,
11 but there are going to be law enforcement personnel. Is it
12 going to be hard for you to accept their testimony because of
13 what happened to your mother and you?

14 PROSPECTIVE JUROR: I'm not sure, but I know my
15 heart was beating pretty fast just knowing that I had to kind
16 of speak about this, yes.

17 THE COURT: Sure. Do you think that you can sit
18 on this jury and be fair and impartial?

19 PROSPECTIVE JUROR: I'm not sure because I never
20 really had resolution. He never really sat down and talked
21 with me. I notice more anger and that kind of thing, but we
22 never had any resolution. I was kind of where I kept my
23 distance for safety.

24 THE COURT: How emotional is this subject to you?

25 PROSPECTIVE JUROR: You just never know until

1 something comes right before -- right in front of your face
2 and you're faced with it. Most of the time, I guess, you
3 don't think about it.

4 THE COURT: Did you feel like your dad might kill
5 you at the time?

6 PROSPECTIVE JUROR: I wasn't sure, but I was
7 completely shocked that he did that.

8 THE COURT: Sure.

9 PROSPECTIVE JUROR: Because that's the last
10 person you expect to do that.

11 THE COURT: Is your dad still living?

12 PROSPECTIVE JUROR: No. He died in '88.

13 THE COURT: Okay. Is your mom still around?

14 PROSPECTIVE JUROR: No. She died in 2018.

15 THE COURT: Okay. You were very close to your
16 mother?

17 PROSPECTIVE JUROR: Yes. I was close to both of
18 them.

19 THE COURT: Sure. Absolutely. You won't be able
20 to consider what happened to you or your mom in deciding this
21 case at all because it's not part of the record in the case
22 in terms of the evidence. Is that okay with you?

23 PROSPECTIVE JUROR: On the surface, I think so.
24 But you never know what internal feelings well up --

25 THE COURT: Right.

1 PROSPECTIVE JUROR: -- because you get more and
2 more detail.

3 THE COURT: Right.

4 Questions from the Government?

5 MR. OLDHAM: I think anytime we handle situations
6 involving what's alleged in this case, which is somebody
7 tried to hire somebody, the judge read it to y'all. Do you
8 remember that?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: That's going to cause an emotional
11 reaction. Do you think your situation with your mom and dad
12 is going to cause you further emotional distraction where you
13 can't decide the facts or can you listen to the facts, apply
14 it to the law, and be able to make a determination?

15 PROSPECTIVE JUROR: I hope that I can, but I
16 can't say that I know that I can.

17 MR. OLDHAM: What are you worried -- like, when
18 you say hope, what are you worried about?

19 PROSPECTIVE JUROR: Since I really have full
20 resolution of my own scenario, I don't know what could be
21 dredged up, and I have some kind of emotional reaction to it,
22 you know, that I don't expect myself.

23 MR. OLDHAM: There's nothing specific, but
24 because this has lingering under the surface, you don't know
25 what could trigger that. Is that basically what you're

1 saying?

2 PROSPECTIVE JUROR: Yes.

3 MR. OLDHAM: Okay.

4 I don't have any further questions, Your Honor.

5 MR. BALLIN: May he have a seat and I ask the
6 Court a question before I ask this gentleman something?

7 THE COURT: Sure. I'm going to let you have a
8 seat right other there in the green chair.

9 MR. BALLIN: I'd like to ask who his father was.

10 THE COURT: That's okay.

11 MR. BALLIN: Okay.

12 THE COURT: I think that's okay. I mean, the
13 only thing is we're going to get more identification material
14 than we had before. Disclosure of the name will not be
15 something that you can disclose outside of this conference,
16 outside of the side-bar. You just can't go back and say, oh,
17 So and So's son is potentially on the jury. We could not do
18 that.

19 MR. BALLIN: Okay.

20 THE COURT: But I think for some other analytical
21 reasons, we probably need to know that.

22 MR. BALLIN: Better to ask permission than
23 forgiveness.

24 THE COURT: I agree with that completely.

25 Yes, sir. And I think Mr. Ballin has a

1 question -- well, I think the question is -- I can ask it,
2 but we won't share it outside of the side-bar.

3 Who was your dad?

4 PROSPECTIVE JUROR: His name was Gerald Lloyd
5 Heard.

6 THE COURT: Okay. And you spell his last name --

7 PROSPECTIVE JUROR: H-E-A-R-D.

8 THE COURT: Did you live with him after you were
9 15?

10 PROSPECTIVE JUROR: No. They separated at that
11 time.

12 THE COURT: So after that time, they were
13 separated?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Yes, sir?

16 MR. BALLIN: Your dad retired in the 80s, is that
17 about right?

18 PROSPECTIVE JUROR: He passed in the 80s.

19 MR. BALLIN: Okay. Well, he was working up until
20 the end?

21 PROSPECTIVE JUROR: Yes.

22 MR. BALLIN: Okay. After this incident with you
23 with him pulling a gun on you, did he continue to work for
24 the police department?

25 PROSPECTIVE JUROR: Yes.

1 MR. BALLIN: Was he charged with any criminal
2 offense?

3 PROSPECTIVE JUROR: Not to my knowledge.

4 MR. BALLIN: Okay.

5 PROSPECTIVE JUROR: But I didn't get to tell
6 police what happened to me. They only knew about what
7 happened to my mother.

8 MR. BALLIN: I think the chances you had visible
9 was not.

10 PROSPECTIVE JUROR: She had visible injuries.

11 MR. BALLIN: Let me ask you, sir: All we can ask
12 of you as a person, as a juror, is to follow the law, apply
13 the evidence, and not let inappropriate things enter into
14 your decision-making process. You got that concept?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. So if the judge instructs you
17 on the law about what the elements of the offense are, what
18 the Government has to prove beyond a reasonable doubt, can
19 you follow the law?

20 PROSPECTIVE JUROR: I think I can, yeah.

21 MR. BALLIN: What about your personal situation;
22 how will your personal situation, being victimized by your
23 late dad, how would that affect, if at all, your ability to
24 follow the law?

25 PROSPECTIVE JUROR: I'm not sure because I can't

1 go to either of them, you know, for any wisdom or advice or
2 resolution.

3 MR. BALLIN: You're concerned about you having
4 thoughts about what happened to you while you're
5 deliberating; is that what you're saying?

6 PROSPECTIVE JUROR: Pretty much. I mean, because
7 I kind of really hadn't thought about the situation until you
8 started to ask questions about whether they had had violence.

9 MR. BALLIN: So you're concerned that, like the
10 judge was asking earlier, if somebody brings up something
11 that you shouldn't, another juror would say, you're not
12 supposed to say that, but can you talk to yourself and say,
13 I'm not supposed to decide this case on what I'm --

14 PROSPECTIVE JUROR: I hope that I -- your
15 reasoning tells you that, but you don't know what is going to
16 happen to you emotionally. Like, I didn't know I was going
17 to start -- my knees are going to start shaking because I
18 knew I had to talk about this.

19 THE COURT: Right.

20 MR. BALLIN: Do you think you would be a better
21 jury for instance on an automobile accident case?

22 PROSPECTIVE JUROR: Yes. There's nothing I can
23 connect directly to that.

24 MR. BALLIN: And so you're sharing this concern
25 because of your inability to commit a hundred percent that

1 this will not affect your -- I say this, your experience will
2 not affect your decision?

3 PROSPECTIVE JUROR: That's what I can't say.
4 That's what I can't say.

5 THE COURT: We never ask anybody to -- typically,
6 to say that they're absolutely sure that they will never be
7 affected. What we are asking people to do is to commit that
8 they will consciously avoid being affected in a case because
9 absolutes are hard to demonstrate, whereas a commitment to
10 avoid the conflict, to avoid any preconceived notion, bias or
11 prejudice, is more attainable.

12 So the question is: Can you consciously make
13 that effort: I will not be influenced by any inappropriate
14 factor. Can you make the commitment that you're going to
15 make that effort?

16 PROSPECTIVE JUROR: Yes, I can make the effort.

17 THE COURT: Okay. I'm going to ask a question
18 because you have an interesting background. Where did you go
19 to high school?

20 PROSPECTIVE JUROR: I went to high school in
21 Chicago, Marshall Harlan.

22 THE COURT: Okay. And where did you go -- where
23 did you learn your additional musical?

24 PROSPECTIVE JUROR: I played by ear. I learned.
25 I was around a lot of musicians coming up my whole life, and

1 I was just picking up things by ear.

2 THE COURT: Okay. Okay. You went to a good
3 school that had a good music program?

4 PROSPECTIVE JUROR: Yeah. I went through a
5 two-year art studio, which included all kinds of art, film
6 making, photography, all kind of things like that. That's
7 pretty much it as far as official education in music. That's
8 just my own.

9 THE COURT: And is the studio, you would feel the
10 studio is pretty successful?

11 PROSPECTIVE JUROR: I mean, for one individual
12 doing it, it's not like Motown, but sustains me.

13 THE COURT: Are you married?

14 PROSPECTIVE JUROR: No, I'm single.

15 THE COURT: You got plenty of time?

16 PROSPECTIVE JUROR: Hopefully.

17 THE COURT: To work on all of this?

18 PROSPECTIVE JUROR: Yeah.

19 THE COURT: It's really interesting to meet
20 somebody with that background.

21 So other questions?

22 MR. SCHOLL: No questions, Your Honor.

23 MR. OLDHAM: No, Your Honor.

24 THE COURT: I'm going to let you go back to your
25 seat. I am going to talk to the lawyers here at side-bar,

1 but I'm going to let you go back to your seat. Thank you.

2 PROSPECTIVE JUROR: Okay. Thank you.

3 THE COURT: Mr. Ballin, we have to be careful
4 about asking for, you know, absolutes. Nothing wrong with
5 asking the question. Somebody can say, sure. That makes you
6 even more nervous. You know what I'm saying?

7 MR. BALLIN: Absolutely. My concern is and
8 position as to why this juror should be excused for cause is
9 his answer to -- you know what, I'm going to rethink. I have
10 nothing else to say.

11 THE COURT: Okay. No motion to excuse. We're
12 going to keep him? It's up to you. I don't care. I mean, I
13 care, but I want to make sure you've got a chance to say
14 whatever you want to say.

15 MR. BALLIN: You apparently didn't see the looks
16 I got.

17 MR. PALMER: Hold on a second.

18 THE COURT: Why don't y'all --

19 MR. BALLIN: We're good. I do not challenge for
20 cause.

21 THE COURT: He's definitely a very intelligent
22 guy and seems like he makes rational sense.

23 Anything from the Government?

24 MR. OLDHAM: No, Your Honor. Thank you.

25 THE COURT: Well, Defendant No. 2, you still got

1 a shot.

2 MR. SCHOLL: Judge, I'm not going to challenge
3 for cause.

4 THE COURT: Okay. All right. That's fine.

5 (End of discussion at side-bar.)

6 THE COURT: All right. I'm going to make sure
7 I'm going to go through quickly. I mean quickly.

8 Juror in Seat 5, anything about the nature of the
9 charges that's going to, in any way, affect your ability to
10 sit on the jury and be fair and impartial?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay. And I am going to ask you:
13 When somebody brings up something they shouldn't bring up
14 that's outside the record, something they remember from their
15 past, anything like that, what are you going to say?

16 PROSPECTIVE JUROR: That shouldn't be considered.

17 THE COURT: Okay. That takes care of that one.

18 And then let's go to juror in Seat No. 6.

19 All right. Anything about the nature of the
20 charges that is in any way going to affect your ability to
21 sit on this jury and be fair and impartial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay. And what are you going to say
24 when somebody brings up -- something happens? What happens
25 is you're having a discussion and somebody brings up

1 something that's not relevant, but we need to remind
2 everybody, will you be willing to speak up?

3 PROSPECTIVE JUROR: Sure.

4 THE COURT: Tell me again what you're going to
5 say.

6 PROSPECTIVE JUROR: That's irrelevant to this
7 case. Let's stick to the basics.

8 THE COURT: We all think about it, and that's
9 really important.

10 Let's get to Juror No. 7. I've been hardly able
11 to see her, so I'm going to get her to come to side-bar
12 because she's been invisible to me over there. Come on
13 around just for a minute. I want to just check.

14 (At side-bar on the record.)

15 THE COURT: I've had a little trouble being sure
16 that I was hearing you accurately, so I wanted to come to
17 side-bar and make sure that I could hear you okay. Are you
18 doing okay today?

19 PROSPECTIVE JUROR: I am.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: Just a little tired. I don't
22 have it now, but I had COVID, so I got a little -- I'm still
23 having some issues.

24 THE COURT: We're glad to keep you right where
25 you are. And I was -- I was going to ask you, I mean, you

1 know, it's perfectly fine to wear a mask. That's perfectly
2 good. But I was going to check and see if you're okay
3 because some people wear a mask because they have been
4 exposed and they don't want to expose anyone else. So what's
5 our situation?

6 PROSPECTIVE JUROR: About COVID?

7 THE COURT: Yeah. Some people wear masks
8 because --

9 PROSPECTIVE JUROR: I have a lot of health
10 problems, so I have to wear a mask.

11 THE COURT: Tell me --

12 PROSPECTIVE JUROR: I just got over it, but I
13 checked myself yesterday, and it was negative.

14 THE COURT: Okay. Tell me about your health
15 problems. I just need to know so I'll understand.

16 PROSPECTIVE JUROR: High blood pressure, high
17 cholesterol, coronary artery disease.

18 THE COURT: Okay. And do you take any
19 medications?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: I'm going to ask how many medications
22 you're currently taking on a daily basis?

23 PROSPECTIVE JUROR: Approximately ten.

24 THE COURT: Okay. Do those in any way affect you
25 being sleepy on occasion, anything like that?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And had you taken medication today?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Is it sometimes hard for you
5 to concentrate because of these medications which affect your
6 sleepiness?

7 PROSPECTIVE JUROR: No. It's just side effects
8 from the COVID now. I have -- these headaches will just come
9 in. Then I have these coughing spells. I get these
10 headaches from the COVID. This is my second time. I got it
11 last year right before I retired, the same month, in March.

12 THE COURT: I'm sorry, tell me again what you
13 retired from.

14 PROSPECTIVE JUROR: Social security.

15 THE COURT: Okay. Which office were you?

16 PROSPECTIVE JUROR: Monroe.

17 THE COURT: I'm sorry?

18 PROSPECTIVE JUROR: Monroe.

19 THE COURT: Monroe. And what did you do there?

20 PROSPECTIVE JUROR: Technical expert.

21 MR. SCHOLL: What was that, Judge?

22 PROSPECTIVE JUROR: Technical expert.

23 THE COURT: Technical expert. Sure. Absolutely.
24 Okay.

25 Have you needed to have any type of disability or

1 anything else as a result of all these things that have
2 happened to you? Have you made an application?

3 PROSPECTIVE JUROR: I am tempted to file, but I
4 really didn't want to get myself a classification being
5 disabled because I'm so smart, you know.

6 THE COURT: Well, you hate to file.

7 PROSPECTIVE JUROR: But medical problems, what
8 can I say?

9 THE COURT: Right. I understand. You were
10 reluctant to file, but you may need to.

11 PROSPECTIVE JUROR: And then I did take my
12 pension from civil service, and it was the most horrible,
13 horrible situation. They gave me an amount that was much
14 higher, and they came back to say it should have been maybe a
15 fourth lower, which I retired because of the money they said
16 I was going to get was going to cover all of my bills. But
17 when it come down to it, I don't have enough money.

18 THE COURT: Sure. I understand.

19 PROSPECTIVE JUROR: I've got an appeal on that.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: You work all of your life,
22 you do the best you can. I always treated people fair. I go
23 out of my way to make sure a person have what they need, and
24 then I get treated like that. So I've been going through --

25 THE COURT: You've been going through a lot.

1 Okay. I just wanted to check. I couldn't hear a couple of
2 things real well. I wanted to make sure it's okay to wear a
3 mask. I'm not saying you shouldn't. That's a good thing.
4 In fact, everybody agrees that that's a good thing for you to
5 do. And I wanted to check on her medications, really. I
6 wanted to check and see how you were doing.

7 Questions?

8 MR. OLDHAM: Yes, Your Honor. The thing that's
9 affecting you the most right now is the fact that you're
10 recovering from having COVID?

11 PROSPECTIVE JUROR: Yes.

12 MR. OLDHAM: How is that affecting you right now?

13 PROSPECTIVE JUROR: I keep getting headaches, and
14 then I get these coughing spells. Thank God, I ain't had one
15 since I've been here.

16 MR. OLDHAM: When is the last time you had one of
17 your headaches?

18 PROSPECTIVE JUROR: About an hour ago.

19 MR. OLDHAM: So while you were sitting here?

20 PROSPECTIVE JUROR: Uh-huh.

21 MR. OLDHAM: When that happens, can you still
22 concentrate or does that kind of take over?

23 PROSPECTIVE JUROR: It kind of gives you a -- I
24 don't know -- anyone had it? Brain fogs. I mean, I'm there,
25 and I'm not there sometimes.

1 MR. OLDHAM: And are you experiencing -- have you
2 experienced that since the judge asked you to come up there
3 and sit in the jury box?

4 PROSPECTIVE JUROR: No, I haven't.

5 MR. OLDHAM: Okay. When you had your headache,
6 where were you?

7 PROSPECTIVE JUROR: Sitting there.

8 MR. OLDHAM: Okay. And when that happened, were
9 you able to concentrate or were you just concentrating on
10 that headache?

11 PROSPECTIVE JUROR: I did go out a minute.

12 MR. OLDHAM: Okay.

13 PROSPECTIVE JUROR: I did. Honestly, I did. I
14 just --

15 MR. OLDHAM: And how long have you been over
16 COVID, but still experiencing these symptoms?

17 PROSPECTIVE JUROR: It's been about a week now.

18 THE COURT: Okay. And has it consistently been
19 the same for about a week?

20 PROSPECTIVE JUROR: Uh-huh.

21 MR. OLDHAM: Okay. I don't have any further
22 questions.

23 MR. BALLIN: When you got your headache about an
24 hour ago, did it just go away by itself or did you take
25 something?

1 PROSPECTIVE JUROR: It's gradually going down. I
2 just close my eyes a little bit. I think I dozed off a
3 little. I didn't mean to, though. I think I did.

4 MR. BALLIN: Having been here for the length of
5 time you have been here, I'm surprised I haven't dozed off.
6 But do you think that with your headache you could fight
7 through the headache and listen to the witnesses?

8 PROSPECTIVE JUROR: I want to say -- I could -- I
9 mean, it takes your concentration away. I think, oh Lord,
10 this pain in my head. I want it to go away.

11 MR. BALLIN: Okay. I have no other questions,
12 Your Honor.

13 MR. SCHOLL: Do you get these headaches during
14 the day multiple times?

15 PROSPECTIVE JUROR: Yes, about three times.

16 MR. SCHOLL: That's what happened to me. I had
17 them all day. It just came and went.

18 No further questions, Judge.

19 THE COURT: I'm going to ask you to have a seat
20 in the little green chair over there. I need to check with
21 counsel.

22 Motions?

23 MR. OLDHAM: Your Honor, I make a motion she be
24 excused for cause. I've experienced that, and it's pretty
25 miserable.

1 MR. SCHOLL: I have too.

2 THE COURT: Okay.

3 MR. OLDHAM: That process after is almost as bad
4 as the process of when you have it really bad.

5 THE COURT: Well, I think we needed to ask the
6 question, so we need to let her be excused for cause. She
7 needs to be excused. It's just not practical.

8 Okay. Yes, ma'am.

9 We need to let you be excused. It's just not
10 practical for you at this point in time to stay because we
11 know that you have a headache, it's going to have a
12 significant -- it's going to have an effect.

13 PROSPECTIVE JUROR: It does, and then, you know,
14 I do want to be fair and do what's right, but it's something
15 going on that might inhibit that, so it's best.

16 THE COURT: You take care. Good luck on your
17 appeal there too.

18 PROSPECTIVE JUROR: Thank you.

19 THE COURT: Thank you so much.

20 I need to see counsel briefly at side-bar. We
21 need to let one of our pending jurors be excused in this
22 matter.

23 And we're going to call another one. No. 67, who
24 is the gentleman who had the episode on the second floor, is
25 now not well again. He's out in the -- had to be moved to

1 the hall. He's not well. He wouldn't be called probably
2 anyway, but we need to let him be excused. He is medically
3 unable to function.

4 MR. OLDHAM: No objection.

5 MR. SCHOLL: No objection.

6 MR. BALLIN: No objection.

7 THE COURT: Okay. He's excused.

8 (End of discussion at side-bar.)

9 THE COURT: We have a seat to fill, which is Seat
10 No. 7, so we'll call Seat No. 7.

11 CASE MANAGER: Your Honor, I believe the next
12 number is going to be 0021.

13 THE COURT: If you know you already need to see
14 me at side-bar, we'll handle that. Otherwise, just go to
15 Seat No. 7.

16 Are you from Atoka?

17 PROSPECTIVE JUROR: I am.

18 THE COURT: All right. I'm from Rosemark.

19 PROSPECTIVE JUROR: Are you?

20 THE COURT: Yeah.

21 PROSPECTIVE JUROR: I know where that's at.

22 THE COURT: Not very far away.

23 PROSPECTIVE JUROR: No, it's not.

24 THE COURT: Not very far away.

25 You've heard all of those questions, right?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Well, what makes a jury different
3 from us making individual decisions? What makes a jury
4 different?

5 PROSPECTIVE JUROR: We have to be very diverse.
6 We have to be able to do it without prejudice. We have to --
7 I don't even know.

8 THE COURT: And you're under oath?

9 PROSPECTIVE JUROR: Yes, we are under oath.

10 THE COURT: Do you want to tell them what you do
11 for a living?

12 PROSPECTIVE JUROR: I am a children's director at
13 church.

14 THE COURT: What age group?

15 PROSPECTIVE JUROR: I have four year olds to
16 sixth grade.

17 THE COURT: Okay. I don't want to ask too much
18 specific, but is it a church in Tipton County?

19 PROSPECTIVE JUROR: It is.

20 THE COURT: Okay. Is it near Rosemark Road?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Okay. That tells me where you are.
23 I'm good. I'm good. I'm just checking on you.

24 PROSPECTIVE JUROR: No.

25 THE COURT: Okay. Exactly. How long have you

1 been children's director?

2 PROSPECTIVE JUROR: For about 18 months now.

3 THE COURT: Okay. What did you do before that?

4 PROSPECTIVE JUROR: I am also a sales
5 administrator.

6 THE COURT: Okay. For what company?

7 PROSPECTIVE JUROR: It is Factory Motor Parts. I
8 work for the VP.

9 THE COURT: Okay. What do y'all make?

10 PROSPECTIVE JUROR: We make car parts.

11 THE COURT: Car parts.

12 PROSPECTIVE JUROR: Aftermarket parts, yes.

13 THE COURT: Is that in Tipton County or is that
14 north of there?

15 PROSPECTIVE JUROR: No, it's in Minnesota.

16 THE COURT: It's in Minnesota?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. With a warehouse?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: I work remote.

22 THE COURT: Okay. You work remote. Okay.

23 Exactly. Well, I kind of thought there was a back story.

24 You heard all the questions we asked earlier?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Really important to know if there's
2 any experience in your life that might in any way affect your
3 ability to sit on this jury and be fair and impartial. We
4 know that's really important.

5 PROSPECTIVE JUROR: I have had something happen
6 but --

7 THE COURT: We're going to talk about that at
8 side-bar.

9 (At side-bar on the record.)

10 THE COURT: How are you doing?

11 PROSPECTIVE JUROR: I'm good. How are you?

12 THE COURT: I'm good. It's going a little slower
13 today. I would like to go a little faster.

14 PROSPECTIVE JUROR: I know. I know.

15 I mean, it's just a neighbor, a year ago,
16 threatened my husband. Police had to be called. You know,
17 it's just that's the only -- I mean --

18 THE COURT: Well, that's sort of important.

19 PROSPECTIVE JUROR: It is. It was very
20 important.

21 THE COURT: And --

22 PROSPECTIVE JUROR: He brought a gun out and was
23 going to shoot him, so . . .

24 THE COURT: He -- the neighbor brought the gun
25 out --

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And was going to shoot your husband?

3 PROSPECTIVE JUROR: My husband.

4 THE COURT: That's quite negative. And the
5 police came?

6 PROSPECTIVE JUROR: Yes, they did.

7 THE COURT: Did they take him into custody?

8 PROSPECTIVE JUROR: They told him one more time
9 because this was a second time we had called the police on
10 him, but they did not take him.

11 THE COURT: This was the -- was it the sheriff's
12 department?

13 PROSPECTIVE JUROR: Sheriff's department. I live
14 in the county.

15 THE COURT: Okay. We have to be really
16 thoughtful. Now, how long ago was that?

17 PROSPECTIVE JUROR: It was back in October.

18 THE COURT: Okay. Is that going to be on your
19 mind as you listen to this case? Is it going to be something
20 that you're going to be thinking about? I mean, this is --

21 PROSPECTIVE JUROR: I would hope not. I would
22 hope not. I think I could be fair, but -- I really feel like
23 I could be fair, but, I mean, it's going to be in the back of
24 your mind, of course.

25 THE COURT: We never ask anybody to not use their

1 common sense or wipe their minds of everything in the world.
2 It's just not practical, so we don't try to do that. But we
3 have safeguards to avoid that being a factor. And that is
4 the factors that we went on -- went through about what jurors
5 are.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: They have to be unanimous. They have
8 to be diverse. You know, jurors have to be a number of
9 things and decide the case solely on the evidence and the law
10 and not consider anything outside the record and so forth.
11 Can you do that in this case?

12 PROSPECTIVE JUROR: I think I can.

13 THE COURT: Okay. All right.

14 Now, I need to ask one set of questions about
15 social media background. Are you a social media person?

16 PROSPECTIVE JUROR: No, not at all.

17 THE COURT: Okay. And I'm going to ask everybody
18 one last round on that, and then I'm about through with it.

19 Let me ask: Do you think, in this case, that you
20 would speak up if somebody brought up an illegal factor,
21 inappropriate factor?

22 PROSPECTIVE JUROR: Oh, absolutely.

23 THE COURT: And I ask everybody to think about
24 what they would say because we don't want it to be a
25 surprise.

1 PROSPECTIVE JUROR: Right.

2 THE COURT: We want it to understandable --

3 PROSPECTIVE JUROR: Correct.

4 THE COURT: -- and not done in such a way as to
5 be personal as much as we can avoid.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What might you say?

8 PROSPECTIVE JUROR: If somebody inappropriately
9 said something?

10 THE COURT: If they -- I always use the same
11 line --

12 PROSPECTIVE JUROR: I would just say that's not
13 what we're here to do. That's not what we heard in court.
14 We have to stick to the facts that we heard.

15 THE COURT: Okay. All right.

16 PROSPECTIVE JUROR: This is my fourth jury.

17 THE COURT: Have you been on a jury before?

18 PROSPECTIVE JUROR: This will be the fourth time.

19 THE COURT: In state court?

20 PROSPECTIVE JUROR: I've been in -- this is my
21 second in this one.

22 THE COURT: Federal?

23 PROSPECTIVE JUROR: And then I've had two in
24 Tipton County.

25 THE COURT: Which one did you have down here?

1 How long ago?

2 PROSPECTIVE JUROR: Oh, it's been about probably
3 eight or nine years ago.

4 THE COURT: Did the jury reach a verdict in that
5 case?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Were you satisfied or dissatisfied in
8 the way in which it proceeded?

9 PROSPECTIVE JUROR: No, it was good.

10 THE COURT: Okay. And the state court, was it in
11 Covington?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Were you satisfied or dissatisfied in
14 the way in which those matters proceeded?

15 PROSPECTIVE JUROR: No, both of them were good.

16 THE COURT: Okay.

17 MR. BALLIN: I didn't hear that, Your Honor.

18 THE COURT: Both of them were good. They were
19 okay.

20 All right. Questions?

21 MR. OLDHAM: Your Honor, I have.

22 The years of the Tipton County juries?

23 PROSPECTIVE JUROR: I don't remember exactly the
24 years. One has been like probably 12 years ago. And one
25 before that. It's been a while since I've been on one.

1 THE COURT: You don't recognize me?

2 PROSPECTIVE JUROR: I do recognize you. You
3 were -- I think you were -- were you in Tipton County? I do.
4 That's -- when I was sitting there, I was looking at him.
5 I've seen him on TV.

6 THE COURT: You've seen both of these people.
7 Mr. Scholl is feeling really left out.

8 MR. SCHOLL: I'm left out of everything.

9 PROSPECTIVE JUROR: And I think you did the one
10 that I was on. You were the attorney.

11 MR. OLDHAM: What kind of case was it?

12 PROSPECTIVE JUROR: It was a rape case for a
13 child.

14 MR. OLDHAM: Okay.

15 THE COURT: Now, it's not impossible or even
16 impractical for someone who has had a lawyer in another case
17 to hear a new case. You see Mr. Ballin. Of course, he's
18 virtually impossible not to see. You know, he'll well known
19 and often seen.

20 PROSPECTIVE JUROR: Exactly.

21 THE COURT: Is that going to influence you at all
22 in this case, though?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Are you going to favor Government
25 counsel because he's familiar with you?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Are you going to favor Mr. Ballin
3 because he's familiar to many people?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Now, are you going to disfavor
6 Mr. Scholl because you haven't seen him before?

7 MR. BALLIN: I feel bad for him because you don't
8 recognize him.

9 MR. SCHOLL: I am better looking.

10 THE COURT: Well, the reason it's so important is
11 that cases have to be decided on the facts, that is, the
12 evidence.

13 PROSPECTIVE JUROR: Exactly.

14 THE COURT: And not based on the personality of
15 the lawyers.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You know, it doesn't have anything to
18 do with it. I know lawyers think it does. They think that
19 their presentation is critical. But really what is most
20 important is the evidence from the witness stand and, of
21 course, the exhibits that are received in the case, and then,
22 of course, the application of the law to the facts as the
23 jury finds them. Is that something you can follow in this
24 case?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay. We're going to let you go
2 back. I am going to check with counsel on this matter, but
3 I'll let you go back to your seat.

4 PROSPECTIVE JUROR: All right. Thanks.

5 THE COURT: Yes, sir? I don't know.

6 MR. OLDHAM: Your Honor, it's not uncommon for
7 someone in Tipton County to sit on multiple cases during --

8 THE COURT: I know.

9 MR. OLDHAM: -- one jury pool, so I think that --
10 the only reason I brought it up was to let everybody know.

11 THE COURT: They need to know, and it's not
12 uncommon for somebody who is from Rosemark to know that that
13 happens. It's just normal.

14 MR. OLDHAM: That's what they do, but I did think
15 I should bring it up since I did practice there.

16 THE COURT: Sure.

17 MR. OLDHAM: But the Government has no motion at
18 this time.

19 THE COURT: And it's not uncommon, frankly, for
20 everybody in west Tennessee to have seen Mr. Ballin, if you
21 likely know him.

22 Mr. Ballin, it's either comforting or not
23 comforting, but I think it's true, right? I mean, you have
24 many people who have said they've seen it.

25 MR. BALLIN: Another subject. We have no

1 objection.

2 THE COURT: Okay.

3 MR. SCHOLL: No objection, Your Honor.

4 THE COURT: Okay. Just to cover everybody.

5 MR. SCHOLL: Yes, sir.

6 THE COURT: Okay.

7 (End of discussion at side-bar.)

8 THE COURT: All right. Now, I have to ask all of
9 you one final set of questions, and I hope it's final. I
10 could put some more things on the screen, but probably won't.

11 And that is, this case is going to involve social
12 media. And it's going to involve social media that involves
13 Ms. Grayson and Mr. Grayson, and I'm going to tell you that
14 because you can't look it up. And I have to say you cannot
15 do that, right, because we don't -- that's not appropriate.
16 But I have to know if you are, one, a person who is familiar
17 with Ms. Grayson or Mr. Grayson from social media.

18 And I have to then know if you are a big user of
19 social media. And I know everybody in the United States
20 seems to have -- not everybody, but many people have a social
21 media presence or a social media regular participation.

22 So I'm going to start actually on the first row
23 and just ask about that, those two questions: Are you
24 familiar with -- this does not make the case any different
25 than any other case. We don't treat it differently. We

1 talked about it earlier. Somebody might be well known.
2 Somebody might be on TV, but we can't treat it differently.

3 Are you familiar with Mr. Grayson, Ms. Grayson,
4 or their social media presence?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Are you a big consumer of social
7 media?

8 PROSPECTIVE JUROR: I wouldn't say a big
9 consumer. I do run a Comms team that has social media
10 channels that we do for my work.

11 THE COURT: Okay. And does that involve anything
12 to do with involving Mr. or Ms. Grayson?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Does that cause you to have
15 somehow some knowledge about social media that you would just
16 feel compelled to share with the rest of the jury if some
17 cases come up even though it's not been part of the evidence?
18 I really have to check on that. In other words --

19 PROSPECTIVE JUROR: No.

20 THE COURT: We need you not to -- if somebody
21 asks you about how something works on social media, we can't
22 really go into that. That's not evidence that jurors can
23 use. Is that okay?

24 PROSPECTIVE JUROR: Yeah.

25 THE COURT: Okay. And I think we've covered

1 that.

2 Now, let's go to juror in Seat No. 2. Well, are
3 you familiar with Mr. or Ms. Grayson through social media?

4 PROSPECTIVE JUROR: I am not.

5 THE COURT: All right. Well, are you a big
6 consumer of social media?

7 PROSPECTIVE JUROR: Not any longer. I cut it off
8 a few years ago.

9 THE COURT: Okay. Does the fact that this case
10 is going to have some things about social media in it that's
11 going to influence you in this case?

12 PROSPECTIVE JUROR: No, Your Honor.

13 THE COURT: Okay. I think we're okay on that,
14 but I want to make sure.

15 Juror in Seat No. 3, are you familiar with
16 Mr. and Ms. Grayson in connection with social media?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Are you a big consumer of social
19 media?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. And is the fact that this case
22 is going to have some things about social media going to
23 influence you at all?

24 PROSPECTIVE JUROR: Oh, no.

25 THE COURT: Okay. Let's go to juror in Seat

1 Number 4. Are you familiar with Mr. and Ms. Grayson from
2 social media or through social media?

3 PROSPECTIVE JUROR: No, I'm not.

4 THE COURT: Okay. You're going to make -- hurt
5 their feelings here. I'm sorry, I'm kidding. Also are you a
6 big consumer of social media?

7 PROSPECTIVE JUROR: Just moderate user.

8 THE COURT: Okay. I know in your business, you
9 probably have to be somewhat aware of social media activity.

10 PROSPECTIVE JUROR: Yeah, but I pretty much stay
11 on the topic of announcements kind of to do with my
12 particular field and not going everywhere and commenting on
13 everything.

14 THE COURT: Would the fact that that case is
15 going to involve some things about social media going to
16 affect you in any way in deciding this case?

17 PROSPECTIVE JUROR: No, I don't think so.

18 THE COURT: Okay. Let's go to juror in Seat 5.

19 Are you familiar with the Graysons in connection
20 with social media and their presence on social media?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Are you a big -- are you a
23 substantial consumer of social media? And that's hard to
24 define. I just don't know.

25 PROSPECTIVE JUROR: I have a bad habit of

1 scrolling through reels more than I should probably but,
2 otherwise, just use it for work and personal.

3 THE COURT: Okay. Is the fact that this case
4 does involve some aspects of social media going to affect
5 your judgment in any way or can you still decide the case
6 solely on the evidence and the law?

7 PROSPECTIVE JUROR: It won't affect.

8 THE COURT: Okay. Hand it over to juror in Seat
9 No. 1.

10 Are you familiar with Mr. and Ms. Grayson or Ms.
11 Grayson in connection with social media?

12 PROSPECTIVE JUROR: No, I'm not.

13 THE COURT: Are you a consumer, a significant
14 consumer of social media?

15 PROSPECTIVE JUROR: I wouldn't say significant.
16 I have a Facebook page, but that's it.

17 THE COURT: Okay. Does the fact that this is a
18 social media case to some degree, not really -- it's not
19 about social media, but there are going to be some mentions
20 of that. Does that in any way affect your ability to sit on
21 the jury and be fair and impartial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: All right. Good.

24 Juror in Seat 7, well, are you familiar with
25 Mr. Grayson and Ms. Grayson or Ms. Grayson in connection with

1 social media.

2 PROSPECTIVE JUROR: No.

3 THE COURT: Are you a consumer of social media?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Would the fact that this is going to
6 have some aspects of social media going to influence you in
7 any way at all in this case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Okay. Well, let's go to the juror in
10 Seat No. 8.

11 All right. Are you familiar with Mr. Grayson and
12 Ms. Grayson or Ms. Grayson in connection with social media?

13 PROSPECTIVE JUROR: No, I'm not.

14 THE COURT: Are you a consumer of social media in
15 any significant way?

16 PROSPECTIVE JUROR: I use social media to post
17 daily scriptures reads for the church.

18 THE COURT: All right. I don't think that has
19 anything to do with -- that's certainly commendable. I'm
20 going to ask you what's your favorite verse?

21 PROSPECTIVE JUROR: I don't have a favorite
22 verse, really.

23 THE COURT: Okay. Okay. You know some people
24 like the shortest one in the New Testament.

25 PROSPECTIVE JUROR: Jesus wept.

1 THE COURT: That's right. That's exactly right.
2 But my point is you do that every day?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. So you are a user of that
5 social media?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Other than that, any other presence
8 or use of social media?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Okay. Does the fact that this
11 case -- it's going to have some references to social media,
12 and we'll talk about it to some degree. Is that going to
13 affect you in any way?

14 PROSPECTIVE JUROR: No, it won't.

15 THE COURT: I'm going to reinforce what I said
16 earlier and that is, if people -- if someone on the jury
17 tries to ask you or asks you about how certain aspects of
18 social media work, you understand that you cannot provide
19 evidence to the jury because, as a juror, you decide the case
20 based on the evidence presented to you and, therefore, what
21 would your answer need to be?

22 PROSPECTIVE JUROR: My answer would be we
23 can't -- repeat the question. Make sure I understand.

24 THE COURT: Well, in this case, if someone was to
25 ask you how certain aspects of social media works because you

1 have posting -- I know some of you -- others of you have some
2 familiarity there -- they want to know how social media
3 works. What would you need to tell them if they're asking
4 about information on which they intend to possibly make a
5 decision? What would you have to tell them?

6 PROSPECTIVE JUROR: I would advise them that, you
7 know, we can't let social media influence our decision one
8 way or another.

9 THE COURT: We also need to make sure that
10 everybody understands that all the evidence in the case has
11 to come from the witness stand and the exhibits. And that
12 they can't -- you can't really ask a juror about facts that
13 might be a basis for a decision. So they can't really ask
14 you that. I mean, they can ask you that, but you have to
15 say, well, we have to decide the case solely on the evidence.
16 Is that okay?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: I'm trying to let everybody know that
19 this is not a chance to go back and have some long discussion
20 about a fact that is not supported by the evidence.
21 Everything that you talk about has to be based on the
22 evidence that's submitted in the case. Is that okay?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Good deal.

25 Juror in Seat 9, have you heard or seen the

1 Graysons on social media?

2 PROSPECTIVE JUROR: I have not.

3 THE COURT: Are you active on social media?

4 PROSPECTIVE JUROR: I get on there to scroll just
5 to keep up with friends or see sports stuff, but --

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: -- I'm not on there all the
8 time as much as other people.

9 THE COURT: When you get your print out every
10 day, how many hours have you spent on social media?

11 PROSPECTIVE JUROR: For daily? It may be an hour
12 on there or something.

13 THE COURT: That's pretty good. That's not bad.

14 Anything about the fact that there's going to be
15 some information about social media in the case, and that the
16 jury will have to make its decision based solely on the
17 evidence in this case and the instructions in the law and
18 can't use information that is not submitted in open court.
19 Is that okay?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Let's hand that over to the
22 juror in Seat 10.

23 Are you familiar with Mr. Grayson or Ms. Grayson
24 or both of them in connection with their social media
25 presence?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Are you active on social media or
3 not?

4 PROSPECTIVE JUROR: Well, if it has to do with
5 the University of Memphis tigers or dogs, I'm on there a lot.
6 Other than that, no.

7 THE COURT: Okay. And the big question is:
8 Should they have a new basketball coach at the University of
9 Memphis? I'm not going to ask that.

10 PROSPECTIVE JUROR: No.

11 THE COURT: I'm kidding. I don't know the answer
12 there, but the point is that there's a lot of discussion.

13 But in this case, would you say that you're then
14 a limited consumer of social media, a limited -- that is, you
15 don't scroll and look for everything?

16 PROSPECTIVE JUROR: I scroll and look at puppy
17 dogs, canines. I really don't -- I'm there to -- I'm
18 scrolling.

19 THE COURT: No problem. This is going to have
20 some aspects about social media in the case. Do you
21 understand that that cannot influence you in deciding the
22 case? Now, that doesn't mean that the evidence presented
23 isn't important. I'm not going to tell you that. Every
24 piece of evidence is important and has the weight that the
25 jury decides to give to it after listening to all the

1 evidence.

2 But the fact that it is a social media case would
3 be no different than if we said, this is a case involving a
4 person who is on television or some other thing. Is the fact
5 that this is a case involving social media and individuals
6 who may be on social media something that would influence you
7 at all?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Okay. That's fine. We just need to
10 think about this. All right.

11 Juror in the next seat over, which should be 11,
12 anything -- are you familiar with the Grayson's presence on
13 social media?

14 PROSPECTIVE JUROR: No.

15 THE COURT: You understand it would be really
16 problematic if somebody went back and said, I'm going to see
17 if I can find them on social media and did some research.
18 I'm sure you understand.

19 PROSPECTIVE JUROR: I won't do that.

20 THE COURT: And we want everybody to understand
21 that. You cannot do that. You know, I'm just -- it's
22 absolutely forbidden. If you inadvertently do something, you
23 have to come tell me, but please don't even think about it.

24 Okay. Are you a consumer of social media?

25 PROSPECTIVE JUROR: Yes. I would say average.

1 THE COURT: Okay. Is the fact that this case is
2 going to have some aspects of social media mentioned in it,
3 and it will have some evidence about that, is that going to
4 influence you in terms of how you resolve the fact disputes
5 in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. Well, we're going to go
8 to our juror in Seat 12, absolutely.

9 All right. Have you ever seen Mr. and
10 Ms. Grayson or Ms. Grayson on social media?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Are you a consumer of social media?

13 PROSPECTIVE JUROR: I have a Facebook page.

14 THE COURT: Okay. Do you post pictures of
15 grandkids and that sort of thing?

16 PROSPECTIVE JUROR: I don't post anything. I
17 just look at pictures.

18 THE COURT: Okay. All right. Anything about the
19 fact that this case will involve some aspects of social media
20 that would influence you in deciding the case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Okay. All right. Well, let's hand
23 that over to your colleague to your right.

24 And are you familiar with Mr. Grayson or
25 Ms. Grayson in connection with a presence on social media?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Are you a consumer of social media?

3 PROSPECTIVE JUROR: Sometimes.

4 THE COURT: And is that basically Facebook, that
5 sort of thing?

6 PROSPECTIVE JUROR: Uh-huh.

7 THE COURT: Okay. Does the fact that Mr. Grayson
8 or Ms. Grayson or both may have some presence on social
9 media, will that affect you in any way in deciding the case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: And let's just go to your last
12 colleague on your right.

13 Are you familiar with Mr. Grayson or Ms. Grayson
14 or both of them in connection with the social media presence?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Are you on -- do you consume
17 social media?

18 PROSPECTIVE JUROR: Oh, yeah, regularly.

19 THE COURT: And part of your job partly?

20 PROSPECTIVE JUROR: No. Personal.

21 THE COURT: Personal. Okay. Do you look at that
22 time slot that tells you how much time you spent?

23 PROSPECTIVE JUROR: I don't want to know that.

24 THE COURT: Okay. Perfectly fine.

25 Is the fact that this case is going to have some

1 aspects of social media, it's going to -- and it's going to
2 have some reason that you will hear a little bit of -- some
3 about that, is that going to influence how you decide the
4 case, that is, will it affect how you decide the case in this
5 matter?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Okay. All right. I needed to ask
8 all of you that. Now, I want to remind you that you are
9 absolutely forbidden to look up anything about -- and nobody
10 wants you to, to look anything up, anything about Mr. Grayson
11 or Ms. Grayson or this case, anything else that might be on
12 social media.

13 And if somebody approaches you or attempts to
14 approach you or somebody says there's a film on social media
15 where something has been posted on social media about this
16 case, you cannot go look at it. Is that okay with everybody?
17 Everybody good there?

18 And what are you going to do if you do see
19 something or somebody approaches you about going on social
20 media and looking for something? What are you going to do?
21 Tell my staff, tell me, and we will take the appropriate
22 action.

23 All right. I think that we've covered everything
24 we're going to cover today in this. And I will tell all of
25 you that are out there, we will move rather quickly through

1 the rest of these matters, so be prepared if you come up here
2 to quickly tell me if you have something that would require
3 you to talk to me at side-bar, and if you have an answer that
4 you know you need to give me as a result of the discussions
5 today.

6 All right. Let me see counsel briefly at
7 side-bar.

8 (At side-bar on the record.)

9 THE COURT: All right. Now, I'm not going to ask
10 any more questions. If they don't know what they're supposed
11 to do by now, we're sunk. There is an opportunity for
12 everyone to ask questions. Cautionary, again, you cannot ask
13 questions to get them to commit to take a position if certain
14 things are established or proven. You just can't do it.
15 It's inappropriate. It's usually short factual questions,
16 and if you don't want to ask anything, don't worry about it.
17 Most of them don't want to answer any more. Anyway, we've
18 done a lot. We've done a lot. It's been a little slow
19 today. I'm not quite sure why.

20 MR. SCHOLL: Can we ask questions about what
21 their opinion is on certainly things as long as it's not
22 specific facts of the case?

23 THE COURT: No. What difference does it make?
24 What opinion are you going to ask about?

25 MR. SCHOLL: Well, Judge, I would like to know

1 what they think about reasonable doubt. Like to know what
2 they think about --

3 THE COURT: No. No, reasonable doubt is what I'm
4 going to tell them it is. They don't have to ever think
5 about it. Reasonable doubt is going to be defined for them.
6 They don't have to have a concept about it.

7 MR. SCHOLL: So I can't voir dire them on their
8 thoughts on reasonable doubt?

9 THE COURT: You can ask them if they will follow
10 the instructions of the Court, and if they won't, we need to
11 get them off the jury. We don't ask people abstract concepts
12 like: What do you think the law ought to be? What do you
13 think the law is? because we're going to tell them what the
14 law is and, therefore, we don't want to implant in the jury
15 the idea that they make up what the law is. They don't.
16 They don't, and we don't want them to. That would be a
17 disaster. I'm sure you don't want that to happen. You want
18 to ask them about reasonable doubt?

19 MR. SCHOLL: Usually, we're allowed to inquire --

20 THE COURT: Not by me.

21 MR. SCHOLL: Okay. Well, this is my record.

22 Inquire about what their thoughts are on reasonable doubt to
23 make sure that they understand the concept because most
24 jurors, when they're instructed, it's a very nebulous concept
25 that most attorneys don't even understand. Also the --

1 THE COURT: I can ask them about it.

2 MR. SCHOLL: -- preconceived notions that people
3 have, they want to hear both sides of the case, which is the
4 right not to testify.

5 THE COURT: Okay. I think that's a really
6 important one. I'll be glad to ask that too. I don't ask
7 them to speculate about what the law is, should be, or maybe
8 ought to be. I just don't do that.

9 But you can always say, if the Court is going to
10 instruct you on reasonable doubt, are you going to follow the
11 Court's instructions? That's the rule. They're going to
12 have to.

13 MR. BALLIN: May I ask if the jury understands
14 that beyond a reasonable doubt is the highest and heaviest
15 burden known under the law?

16 THE COURT: No. That's just argument. That's
17 just argument. I mean, at the end of the case, you can argue
18 those things. That's fine. That's just argument. I mean,
19 that's just a way to pose an argument.

20 MR. SCHOLL: May I get my notes just one second,
21 Your Honor, so I can address these things?

22 THE COURT: Sure. I'll cover a couple of things
23 if you want me to.

24 MR. SCHOLL: I have a couple of things, Your
25 Honor, I want to be able to address. One is the presumption

1 of innocence, I would like to go through that concept with
2 the jury and --

3 THE COURT: Okay. I'll cover it.

4 MR. SCHOLL: Okay. I believe we also need to --
5 we've talked about burden of proof, Judge, but I think we
6 need to discuss in detail with them what their thoughts are
7 on burden of proof.

8 Mr. Ballin brings up a very good point that I
9 know some of these people sat on juries. We don't know who
10 yet. But at least one person has responded and said they sat
11 on a jury. If they sat on a civil jury, that burden is way
12 lower. I think it needs to be emphasized to our jury how
13 strong the burden of proof is and how difficult a burden it
14 is. That's the greatest burden that we have.

15 THE COURT: I never know how difficult it is
16 until we conclude the case. I just don't know. It's going
17 to be what it is. They have to meet the definition of
18 reasonable doubt under the law. I think that's what the rule
19 is.

20 What we don't do is we don't -- we don't -- we
21 tell -- we make sure the jury understands they must follow
22 the law. At the end of the case, you can say, they haven't
23 met their proof -- their burden of proof. That's fine.

24 MR. SCHOLL: Well, my concern, Judge, is --

25 THE COURT: Sometimes that works pretty well.

1 MR. BALLIN: We need to ask those types of
2 questions so we can intelligently exercise our peremptories
3 is our humble position.

4 THE COURT: You can't -- asking a juror what they
5 think the law is or what the law ought to be is fraught with
6 problems because when you ask them what it is, they don't
7 know what it is. I'm going to tell them what the law is. If
8 you ask them what it ought to be, that imbeds a preconceived
9 notion as to what the law is and commits them to a position
10 that is inappropriate, so we don't want to do that.

11 There's nothing wrong with making sure that they
12 understand each of these concepts. This is not a you pick
13 the law, you decide what the law is, and you decide. This is
14 you follow the law as is required.

15 MR. BALLIN: Can we counter it in terms of: Can
16 you follow the law assuming the judge gives it to you?

17 THE COURT: Oh, sure. Absolutely. We definitely
18 want everybody to do that.

19 MR. SCHOLL: And one of my reasons for asking to
20 do those things, Judge, is because it gives me an idea of
21 what people's preconceived notions are coming into this trial
22 and whether or not there's somebody I need to leave on my
23 jury. If it's somebody that cannot get past the fact that
24 they want to hear both sides of the case, which is often a
25 big thing, then I don't want them to be someone that's stuck

1 on my jury.

2 THE COURT: Well, the idea there is -- and I hear
3 what you're saying. And so both sides of the case, they
4 don't have to hear any side of the case. There's no
5 obligation to present any evidence at all. And we need to
6 make that clear.

7 I will make that clear in preliminary
8 instructions, and I can make that clear now. I'll do it. I
9 mean, you know we're going to do this right. We're going to
10 get it done right. And, you know, this is going to be an
11 interesting case. I have no idea how it's going to come out.
12 So not every case is like that.

13 MR. BALLIN: You're not going to issue a judgment
14 of acquittal?

15 THE COURT: I never know how a case is going to
16 come out. Well, occasionally, we have done that. You know
17 that. You know that. The Government does have a burden
18 here. Let me ask a few more questions. Y'all have got some
19 good points, and we'll ask those.

20 MR. OLDHAM: Your Honor, before we break --

21 THE COURT: We also have to take a restroom break
22 pretty soon.

23 MR. OLDHAM: I was going to talk to the jurors
24 about their determin- -- that one of their jobs is to
25 determine credibility.

1 THE COURT: Sure.

2 MR. OLDHAM: And that -- and then say, you do
3 this in your everyday life, what sort of things do you rely
4 on?

5 THE COURT: It does. You're making your closing
6 arguments and not your voir dire.

7 MR. OLDHAM: Okay.

8 THE COURT: I mean, you know, make your --
9 remember, you get to make a closing argument. You get to --
10 that's fine. And you get to make an opening statement in
11 voir dire.

12 I went to a seminar one time in Florida, and they
13 said, you can win your case on voir dire, and the answer was,
14 if you're doing that, the judge is doing it wrong. You know
15 what I'm saying. It's just inappropriate. Voir dire is just
16 voir dire. You're going to get your shot. You'll get it.

17 MR. PALMER: My fear is that we get our shot once
18 they're all sat, and we don't realize that they think the
19 burden of proof is actually a preponderance until they get
20 the instructions.

21 THE COURT: We're not going to get that confused.
22 We'll take care of it.

23 MR. BALLIN: About how far are we going to go
24 today? Are we going to --

25 THE COURT: We're going to try to get our jury,

1 but if we don't, we're going to get it early tomorrow.

2 (End of discussion at side-bar.)

3 THE COURT: We're going to take a break in
4 literally just a couple of minutes. I've got to go over a
5 couple of concepts very quickly with you.

6 And that is: Does anybody think that the
7 defense, either defendant, Ms. Grayson or Mr. Grayson, has to
8 put on any proof at all? What do you think about that? This
9 is not Perry Mason.

10 Okay. Let's go to Juror No. 4. Do they have to
11 put on any proof at all?

12 PROSPECTIVE JUROR: The lawyers have to provide
13 the evidence.

14 THE COURT: The evidence comes from -- and the
15 defense never has to present any proof at all, period. They
16 don't have to. This is not Perry Mason. You know, Perry
17 Mason gets them on the stand and asks the defendant a bunch
18 of questions. That's just make believe. That is not the
19 truth.

20 One of the principle ideas in the Constitution
21 and the Bill of Rights was that you didn't have to do that.
22 You never have to testify -- the defendant never has to
23 testify in any case.

24 Now, I'm not saying they won't testify. It will
25 be up to them. But they never have to, and you can never

1 even talk about it if they decide not to. You know, they
2 say, the Government didn't prove their case. They say to
3 themselves, I'm not getting on the stand. The Government
4 didn't prove it. I'm not getting on there.

5 They don't have to testify. And you can't even
6 discuss it in your deliberations that somebody didn't put on
7 any proof or testify.

8 I see a few mystery looks over there. Is that
9 okay into my Juror No. 8?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: They never have to testify. Juror
12 No. 1, never to have testify?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Juror No. 12? I'm watching Juror 12.
15 Never have to testify, is that okay?

16 PROSPECTIVE JUROR: Yeah. You said they sat down
17 at --

18 THE COURT: They never have to testify.

19 And we're going to take a break literally in just
20 a moment.

21 This is --

22 PROSPECTIVE JUROR: I don't know. Didn't you
23 say -- you said they don't have to testify, right?

24 THE COURT: They don't have to. They have a
25 constitutional right embedded in the Constitution and the

1 Bill of Rights not to testify at all.

2 PROSPECTIVE JUROR: Okay. Well, no.

3 THE COURT: They don't have to, and that's a
4 really important guarantee that is from 18 -- sorry, 1789 and
5 1791, and so forth. So important guarantee, you never have
6 to testify if you're a defendant.

7 Now, a person makes their own decision about
8 that. But can you even talk about it if they decide not to
9 testify or present any evidence at all? Can you even talk
10 about it in the jury room?

11 PROSPECTIVE JUROR: No.

12 THE COURT: No, absolutely not.

13 PROSPECTIVE JUROR: No.

14 THE COURT: We want to make sure.

15 Okay. Now, also, let me go to Juror -- right
16 next to you, he's right in there, No. 13, Seat 13.

17 Do they start out with -- what presumption do
18 they start out with in this case?

19 PROSPECTIVE JUROR: Innocent.

20 THE COURT: Innocence. They start out innocent.

21 Who has the burden of proof at all times in this
22 case?

23 PROSPECTIVE JUROR: Prosecutor.

24 THE COURT: The Government in this case at all
25 times, absolutely. It doesn't change. Doesn't change.

1 I want to make sure that's okay with juror in 14.
2 Is that okay with you?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: Okay. Just being sure. Just being
5 sure. Anybody got a problem about that because it's really
6 important?

7 Now, also, have any of you been on a civil jury?
8 My goodness. Nobody. Anybody out there been on a civil
9 jury? Just a couple of people. Okay. Totally different
10 burden of proof, right? That's preponderance of the
11 evidence.

12 This is beyond a reasonable doubt. And that's --
13 that's a high standard. That's a high standard. And we
14 would want that and do want that in every criminal case.

15 Anybody have a problem with the fact that the
16 burden of proof is on the Government, and they have to prove
17 their case beyond a reasonable doubt? Any problem at all
18 with that? Jury No. 9, Seat 9? None at all on that one.

19 PROSPECTIVE JUROR: No.

20 THE COURT: All right. Let's go to my juror in
21 Seat No. 3.

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay. And have you been able to hear
24 okay?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Okay. I want to be absolutely sure.

2 PROSPECTIVE JUROR: I hear you.

3 THE COURT: You will tell me if you cannot.

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Okay. Is there anybody else who
6 might want any assistance on hearing?

7 Okay. We know we've got to take a break here,
8 and I'm sorry we've gone -- we've taken a little longer, but
9 doing it right is better than doing it quickly.

10 Seven things to remember. Don't discuss the case
11 among yourselves at all. Don't discuss it with anybody else.
12 If you call home, you can say we hope to get the jury before
13 the end of the day. We're going to work hard to do that.
14 It's going to be a little tight.

15 And then, of course, you cannot speak to the
16 witnesses, lawyers, or parties at all. You can't speak to
17 them at all. They cannot speak to you. If somebody tries to
18 talk to you, you're going to tell the court security officer,
19 a member of my staff, or me. You cannot do any research or
20 make any inquiry at all. That means anything on electronic
21 media, anything like that. No type of research at all,
22 books, computers, anything at all, legal books, nothing at
23 all.

24 And, of course, you cannot or you must avoid, you
25 must avoid anything in the media that might be about this

1 case. Media is a big tent. It includes everything on the
2 computer. Absolutely must avoid it. What do you do if you
3 do see something? You tell me about it. You tell me about
4 it. You'll not get in trouble, you just need to tell me
5 about it.

6 And then, of course, the last thing is keep an
7 open mind. Well, I know we've -- we've taken a little longer
8 than we sometimes need to, but we're doing it right. So
9 don't -- I'm going to let everybody be excused.

10 This will be a 20-minute break at the most.
11 We're going to come back, and I'm going to discuss with
12 counsel. We're going to see how far we can get today. We're
13 going to move as fast as we can.

14 Thank you all very much. We're going to let you
15 be excused for this restroom break.

16 (Prospective jury panel out at 3:44 p.m.)

17 THE COURT: All right. Let me check with counsel
18 real quickly about one thing, which is anything else you want
19 to ask them about? I covered at least three of the points we
20 wanted to cover. Anything else?

21 MR. SCHOLL: If I may have a moment, Judge?

22 THE COURT: Nothing else from the Government.
23 Anything else, Mr. Ballin?

24 MR. BALLIN: I'm not asking for anything else.
25 I'm asking to be allowed to ask questions during voir dire.

1 I do not intend to run afoul of the Court's directions and
2 orders and intend to represent our client.

3 THE COURT: Okay.

4 MR. BALLIN: But beyond that, I don't have
5 anything to ask the Court, specifically.

6 THE COURT: Okay. And how long are you going to
7 take on voir dire? It needs to be fairly short. I've
8 covered the waterfront.

9 MR. BALLIN: Thirty minutes.

10 THE COURT: How much shorter can you make it?

11 MR. BALLIN: I think that's up to you. I'll make
12 it as short as I can, Your Honor.

13 THE COURT: Yeah, let's make it short because I
14 think if you've got a question, it's almost easier for me to
15 ask it than it is for you. If you want to ask me, that's
16 fine. I'll be glad to do it. Let's make it short, though,
17 because anything that sounds like argument, you know, I can't
18 let you do it, so . . .

19 MR. BALLIN: Got it.

20 THE COURT: Okay. Mr. Scholl, and what have we
21 got from -- in terms of questions? Often you say, no
22 questions. What's going on here? What's going on here?

23 MR. SCHOLL: Well, I was hoping to get to the
24 point where I could actually say something in the trial,
25 Judge. I'm getting there.

1 So, Judge, I'd like to see what Mr. Ballin has to
2 say first. Anything that I would present to the jury may be
3 very, very brief. It may -- it won't go any longer than 30
4 minutes.

5 THE COURT: Right.

6 MR. SCHOLL: I think once I hear what everybody
7 has to say, Judge, I seem to be getting shoved out of the
8 way.

9 THE COURT: Well, no, no, no. Not at all. In
10 fact, you know, we know that your major role is in opening
11 statement, and then your major role is in examination,
12 cross-examination, and in closing.

13 MR. SCHOLL: I understand I'm in a different spot
14 because I'm last on the list -- or once everybody goes, a lot
15 of times everything has happened.

16 THE COURT: Yeah, sure, sure. Right. I know
17 that we're all trying to push forward now, and it seems it's
18 not gone quite as quick as we'd like for it to have.

19 Okay. Well, we'll see everybody shortly, and
20 we'll get it taken care of as much as we can.

21 (A recess was taken from 3:48 p.m. to 4:03 p.m.)

22 THE COURT: On the food stamp fraud question,
23 there probably is a question on -- for the Government
24 witness, on that question that can be asked. On the other
25 two, I don't think there is. Certainly not on the marijuana

1 question, that cannot be asked. Nothing there. And it
2 sounds like on the card cracking, I just can't tell. It
3 doesn't sound like it's something.

4 MR. BALLIN: Your Honor, can you -- Mr. Palmer
5 just walked in.

6 THE COURT: We'll enter an order probably early
7 tomorrow morning. But on the card -- on the food stamp fraud
8 question, probably a question that can be asked there. We're
9 working on it because -- but it has to be the right question.
10 In other words, we're not going to have a mini trial. It's
11 just a short question. But you understand, it won't be very
12 long. You don't have to have a lot anyway on that. It
13 depends on what the answer is.

14 So if the witness says, yeah, I did it, you know,
15 and the Government made me do it, whatever it is. I'm sort
16 of kidding. But you know, I did it, it's kind of the end of
17 the road on that. It's kind of done. And we all know that.

18 And on the card cracking thing, I'm just not
19 clear on that. It sounds like it's something that probably
20 is not askable just because it's probably not appropriate,
21 but I'm going to look at that a little more. The marijuana,
22 of course, has been out all along. So we're working on it.
23 We'll get you something final on that. And the Government is
24 probably not surprised. There's a little bit of an issue
25 there that probably is appropriate to come in on the

1 credibility question as that particular witness. So that's
2 one of those close calls.

3 MR. PHILLIPS: I understand, Your Honor. I would
4 ask could we have a jury out hearing before that witness
5 testifies with that issue?

6 THE COURT: The normal thing to do is -- because
7 we won't -- I won't know how it sounds and how the witness is
8 responding. I won't know any of those things until it
9 happens right then, I mean, until we've gotten to that point,
10 and then I will know what to do with it. But you're right,
11 I'll have to listen, because, you know, maybe -- it just
12 affects the final ruling.

13 MR. PHILLIPS: Yes, Your Honor.

14 THE COURT: But I think the one that's the close
15 one is the food stamp fraud question, and I don't know all
16 the details on those things. So -- but this is not going to
17 be a mini trial. It's just going to be a short inquiry, but
18 that's what it normally is. I know that defense counsel is
19 well aware they're usually short questions. We all know
20 that's the best practice anyway. You get a yes on that, and
21 you're not unhappy.

22 MR. SCHOLL: There will be some pending charges,
23 Your Honor, with regards to those witnesses. There will be
24 some pending charges especially with regards to Ms. Johnson.

25 THE COURT: Well, pending charges are a little

1 different situation, and we'll talk about that.

2 MR. SCHOLL: We'll address that at that time. I
3 just want to give the Court a heads-up on that.

4 THE COURT: We'll address that at that time, but
5 we're going to have to move on today.

6 Okay. We're ready to bring the panel in? By the
7 way, anything else that you need me to ask? I think we've
8 covered what -- most of what was asked anyway.

9 Yes, sir, we're ready for the panel. We are not
10 going to stay real late. That's always a bad idea because
11 people get tired. We're not going to stay real late because
12 people get tired.

13 MR. LEVINE: Yes, Your Honor, I'm sorry.

14 THE COURT: And that's just -- we try not to do
15 that. We will start early though because that way I know
16 you're rested.

17 (Prospective jury panel in at 4:08 p.m.)

18 THE COURT: All right. Everybody can be seated.

19 Ladies and gentlemen, I've concluded the
20 questions I need to ask. If any of you think you still need
21 to speak to me at side-bar about something, please let me
22 know now. I think we've covered everything pretty
23 thoroughly.

24 Okay. Seeing no further response on that, the
25 Government and the defense are allowed to ask a few brief

1 questions, not very long, because we've covered so -- I even
2 asked a number of questions they asked me to ask, so I pretty
3 well covered what they asked me to ask already.

4 But let me ask, Mr. Oldham, do you wish to make
5 any inquiry of the panel?

6 MR. OLDHAM: The United States has no questions
7 at this time, Your Honor.

8 THE COURT: All right. Certainly, that's fine.

9 Mr. Ballin, I think that you have voir dire
10 responsibilities for Ms. Grayson, so do you have any
11 questions and, of course, we know it's going to be pretty
12 limited?

13 MR. BALLIN: I do, and let me -- test, test.

14 THE COURT: We'll assist with that if necessary.
15 While you're getting ready, what will happen will be we will
16 not stay real late because we start pretty early and you
17 started pretty early, so we would like to conclude a jury
18 selection today. That's unlikely that we will do that.

19 So what we'll do is you'll be coming back in at
20 8:30 tomorrow morning. We will start in here no later than
21 nine o'clock. We'll start in here earlier if we get
22 everybody here, which means really important for all of you
23 to come right on in at 8:30. We'll do a check-in and we'll
24 get everybody up. And then we'll get the jury, and I suspect
25 we'll definitely have the jury after fairly -- it takes a

1 little while, but we'll definitely have the jury tomorrow
2 morning. Then all of those who are not selected will be
3 excused.

4 We'll have 12 jurors and two alternates, but the
5 alternates will stay with the case until the case is
6 essentially over. They don't go home after the jury gets the
7 case. They simply sit in the jury room not debating, not
8 deliberating, but listening in the event that something
9 happens to one of you, who are in the jury room deliberating,
10 so that's how we'll handle that. That's our situation. So
11 that means you are going to get to go home reasonably soon.

12 MR. BALLIN: Thank you.

13 Good afternoon. A general question to all of
14 you, and then I may have some specifics.

15 Do you understand what lawyers say is not
16 evidence? Does everybody understand that? That I'll speak
17 for these two gentlemen that if we, as lawyers, say something
18 different from what you hear from the witness stand, don't go
19 by what we say. Not an intentional misrepresentation, but
20 you understand that what we say is not proof. Everybody
21 understand that?

22 Judge has talked about an indictment. Can you
23 follow the law that that indictment carries no weight
24 whatsoever? It's just a starting notice of what
25 Ms. Grayson -- Ms. Grayson is accused of. Everybody

1 understand that?

2 If you look at Ms. Grayson right now, and this is
3 a question that ties in with the burden of proof and the
4 presumption of witness.

5 Juror No. 1, look at Ms. Grayson right now.
6 Guilty or not guilty?

7 PROSPECTIVE JUROR: Right now, not guilty. I
8 don't have any evidence to say otherwise.

9 MR. BALLIN: No evidence contrary to the
10 presumption of what?

11 PROSPECTIVE JUROR: Innocence.

12 MR. BALLIN: Innocence. Is everybody good with
13 that? That Ms. Grayson is presumed to be?

14 PROSPECTIVE JURORS: Innocent.

15 MR. BALLIN: Until proven guilty by proof to
16 commit you otherwise beyond what?

17 PROSPECTIVE JURORS: Reasonable doubt.

18 MR. BALLIN: And do you understand when the --
19 I'll ask you if you can follow the law on reasonable doubt
20 and what that means when Judge McCalla gives it to you.

21 Just as what we say is not evidence, what we say
22 is not the law. Do you understand the evidence comes from
23 the witness stand? Law from the judge? Everybody understand
24 that?

25 Juror No. 5, if a heard, I didn't get it. I too

1 have a spouse that says I can't hear thunder, but what do you
2 do for work?

3 PROSPECTIVE JUROR: I am a nonprofit arts
4 administrator.

5 MR. BALLIN: One more time?

6 PROSPECTIVE JUROR: Nonprofit arts
7 administration.

8 MR. BALLIN: Okay. And how long have you been
9 doing that?

10 PROSPECTIVE JUROR: Going on eight years.

11 MR. BALLIN: Okay.

12 And, Judge, may I ask the jurors about if they
13 have a significant other and what that person does for a
14 living?

15 THE COURT: Sure. Although it is up to each
16 juror as to whether or not they want to tell you. And the
17 reason we do that is we respect your ability to make that
18 decision but, obviously, if one of you has a spouse and that
19 spouse is working for the United States Government, we might
20 want to know that. And so that would be really important.

21 MR. BALLIN: Thank you.

22 THE COURT: Sure.

23 MR. BALLIN: So do you have a significant other,
24 Juror No. 1?

25 PROSPECTIVE JUROR: Yes.

1 MR. BALLIN: And what does that person do for a
2 living?

3 PROSPECTIVE JUROR: They own their own business.

4 THE COURT: If you want to pass that mike. I
5 don't know what's going on here, but --

6 PROSPECTIVE JUROR: Yes. And they own their own
7 business.

8 THE COURT: Hold it right there.

9 MR. BALLIN: All right. Let's start over.

10 Do you have a significant other?

11 PROSPECTIVE JUROR: Yes.

12 MR. BALLIN: And what does that person do for a
13 living?

14 PROSPECTIVE JUROR: They own their own online
15 business.

16 MR. BALLIN: And what is that business?

17 PROSPECTIVE JUROR: It's an Etsy site. They sell
18 products.

19 MR. BALLIN: Did you say exercise?

20 PROSPECTIVE JUROR: Etsy. It's a platform for
21 selling things online.

22 MR. BALLIN: All right. If you'll pass the
23 microphone down to Juror No. 2.

24 Do you have a significant other?

25 PROSPECTIVE JUROR: I do.

1 MR. BALLIN: And what does that person do?

2 PROSPECTIVE JUROR: She is a financial advisor.

3 MR. BALLIN: I'm not understanding today, and it
4 may be the echo. Tell me again, sir. I apologize.

5 PROSPECTIVE JUROR: She works in financial
6 advising.

7 THE COURT: Okay.

8 And Juror No. 3, do you have a significant other?

9 PROSPECTIVE JUROR: No, sir. He's deceased.

10 MR. BALLIN: And what did he do in his lifetime?

11 PROSPECTIVE JUROR: He didn't.

12 MR. BALLIN: Okay. Juror No. 4?

13 PROSPECTIVE JUROR: I'm single.

14 MR. BALLIN: And what does that person do?

15 PROSPECTIVE JUROR: I said I'm single.

16 THE COURT: It's a limited question.

17 MR. BALLIN: Oh, single. Don't tell my wife she
18 is correct that I can't hear.

19 Ma'am, No. 5?

20 PROSPECTIVE JUROR: Yes, I have a husband.

21 MR. BALLIN: And what does he or she do?

22 PROSPECTIVE JUROR: He's a visual artist.

23 MR. BALLIN: Juror No. 6?

24 PROSPECTIVE JUROR: I am single.

25 PROSPECTIVE JUROR: Yes, I'm married.

1 MR. BALLIN: And what does your spouse do?

2 PROSPECTIVE JUROR: He's a manufacture foreman.

3 MR. BALLIN: And that's in Tipton County?

4 PROSPECTIVE JUROR: In Memphis.

5 MR. BALLIN: Judge, may she just pass the
6 microphone to 14 instead of coming all the way down?

7 THE COURT: Okay. We'll do that. That's fine.

8 PROSPECTIVE JUROR: Yes.

9 MR. BALLIN: And?

10 PROSPECTIVE JUROR: She works at Expeditor's
11 global freight.

12 MR. BALLIN: Okay.

13 No. 13?

14 PROSPECTIVE JUROR: Single.

15 MR. BALLIN: And No. 12?

16 PROSPECTIVE JUROR: Yes. He's a supervisor at a
17 chemical plant.

18 MR. BALLIN: Okay.

19 No. 11?

20 PROSPECTIVE JUROR: Yes. And yes, and he's an
21 investment advisor.

22 MR. BALLIN: Okay.

23 PROSPECTIVE JUROR: No. I'm single, divorced.

24 MR. BALLIN: Nine?

25 PROSPECTIVE JUROR: Single.

1 MR. BALLIN: Eight?

2 PROSPECTIVE JUROR: Yes, and she's a stay-at-home
3 mom.

4 MR. BALLIN: Okay.

5 No. 8, tell me about your social media use. What
6 did you tell me? Do you post stuff? Do you get on TikTok
7 and act all crazy?

8 PROSPECTIVE JUROR: I don't do TikTok. I just
9 every morning I put some inspirational scripture on.

10 MR. BALLIN: Okay.

11 PROSPECTIVE JUROR: And that's about the gist of
12 it.

13 MR. BALLIN: Pass it down to No. 9.

14 Tell me about social media, do you go on TikTok?

15 PROSPECTIVE JUROR: No. I don't even have that.

16 MR. BALLIN: If you don't look, you don't act out
17 on TikTok either, I guess?

18 PROSPECTIVE JUROR: No, I don't have TikTok.

19 MR. BALLIN: Okay.

20 PROSPECTIVE JUROR: I do, but I'm just looking at
21 dogs and football?

22 MR. BALLIN: Do you post things?

23 PROSPECTIVE JUROR: No, not at all.

24 MR. BALLIN: Okay.

25 Yes, ma'am, No. 11?

1 PROSPECTIVE JUROR: I do not have TikTok.

2 MR. BALLIN: And what about other social media
3 platforms?

4 PROSPECTIVE JUROR: Yeah, I have Facebook and
5 Instagram, but I just look at stuff. I don't ever post
6 anything.

7 MR. BALLIN: Okay. No. 12?

8 PROSPECTIVE JUROR: Same. I just look at stuff.
9 I don't post anything. I have Facebook.

10 MR. BALLIN: What's the most bizarre thing you've
11 seen on social media?

12 THE COURT: Let's ask that a little more nicely.
13 There's some pretty strange things on social media.

14 MR. BALLIN: That's what I'm asking. I agree.

15 That's what I'm asking, Judge. What's the
16 strangest thing? Can I ask that?

17 THE COURT: Can we ask what would be
18 representative of what you might look at on social media?
19 We'll start there, and if we need to ask the other, we will.

20 MR. BALLIN: I'll move on.

21 PROSPECTIVE JUROR: Yes.

22 MR. BALLIN: Now, let me ask you, please, ma'am:
23 Does anybody -- and this is to anybody. Do any of you know
24 an Olivia Johnson? Do any of you know a Brandon Thomas?
25 Derricka Harwell? Jenny Chaney -- Chung? Jenny Chung? An

1 ATF agent, Leslie Jones? And Ms. Hosafros? Do y'all know
2 any of those people?

3 Do any of you have any connections with law
4 enforcement here in your community in which you live or
5 elsewhere like a friend, relative that's law enforcement?

6 No. 7?

7 PROSPECTIVE JUROR: My son is a Memphis police
8 officer.

9 MR. BALLIN: And is he uniformed patrol or
10 detective?

11 PROSPECTIVE JUROR: He's a uniformed patrol, but
12 he's at the academy. He's an instructor right now in
13 training.

14 MR. BALLIN: Okay. Does he share with you his
15 job and what he does?

16 PROSPECTIVE JUROR: No.

17 MR. BALLIN: The fact that your son is a police
18 officer, will that affect your ability to be fair and
19 impartial?

20 PROSPECTIVE JUROR: No.

21 MR. BALLIN: Will it lessen the burden of proof?

22 PROSPECTIVE JUROR: No. And my father was a
23 captain on law enforcement.

24 MR. BALLIN: Memphis police? What was your dad's
25 name?

1 PROSPECTIVE JUROR: Bradley Bland.

2 THE COURT: We need to get that mike there. I'm
3 not sure what's happened here, but we need to get that mike
4 there.

5 MR. BALLIN: Captain Bland?

6 PROSPECTIVE JUROR: Yes.

7 MR. BALLIN: Okay.

8 Anyone else have connections with law
9 enforcement?

10 No. 9?

11 PROSPECTIVE JUROR: I know people.

12 PROSPECTIVE JUROR: I do too.

13 MR. BALLIN: Well, let's stop at 12. Tell me
14 about your connection with law enforcement folks.

15 PROSPECTIVE JUROR: Well, a friend of mine is
16 married to one, and his name is Richard McKinney.

17 MR. BALLIN: The follow-up question is based on
18 that relationship: Will that relationship affect your
19 ability to be fair and impartial?

20 PROSPECTIVE JUROR: No.

21 MR. BALLIN: That's the issue.

22 PROSPECTIVE JUROR: No.

23 MR. BALLIN: You understand why I'm asking?

24 PROSPECTIVE JUROR: (Moving head up and down.)

25 MR. BALLIN: Okay. And No. 9?

1 PROSPECTIVE JUROR: I know -- I used to coach
2 competitive baseball in Arlington where I live. Two of the
3 dads were cops. One of them was a U.S. Marshal.

4 MR. BALLIN: Okay. Do you know a guy named
5 Headley, sheriff's department?

6 PROSPECTIVE JUROR: No. I have a neighbor whose
7 last name is Headley, but he's not --

8 MR. BALLIN: But with the competitive baseball
9 stuff?

10 PROSPECTIVE JUROR: No.

11 MR. BALLIN: Based on that relationship that you
12 have with law enforcement, does it lessen the burden of
13 proof? Does it lessen the presumption?

14 PROSPECTIVE JUROR: No, it won't affect in any
15 way.

16 MR. BALLIN: Presumption of what?

17 PROSPECTIVE JUROR: Innocence.

18 MR. BALLIN: Okay.

19 No. 8, did you have anybody?

20 PROSPECTIVE JUROR: No.

21 MR. BALLIN: How about any connections with a
22 prosecutor's office?

23 And No. 5? If we can pass that down.

24 PROSPECTIVE JUROR: I have a friend who works in
25 the DA's Office.

1 MR. BALLIN: Here in Shelby County?

2 PROSPECTIVE JUROR: Yes.

3 MR. BALLIN: In what capacity?

4 PROSPECTIVE JUROR: I think her position is
5 assistant city attorney.

6 MR. BALLIN: Okay. Do you have any legal
7 training?

8 PROSPECTIVE JUROR: I took a museum law class in
9 grad school.

10 MR. BALLIN: Anyone else have legal training?

11 What if, No. 2 -- Juror -- Mr. -- Juror No. 2,
12 what if Ms. -- what if our client decides not to testify?

13 PROSPECTIVE JUROR: That's well within her right.

14 MR. BALLIN: I've been married 47 years, and my
15 wife, best mom, wife, grandma, she wouldn't be a good juror
16 because she would say, I need to hear.

17 What's your response to my wife not being a good
18 juror?

19 PROSPECTIVE JUROR: Not being able to hear?

20 MR. BALLIN: No, that she would need to hear from
21 the accused?

22 PROSPECTIVE JUROR: Oh, oh, she wouldn't be a
23 good juror if she needed to hear from the defendant.

24 MR. BALLIN: Do you understand, everyone, that if
25 our client doesn't testify, can you follow the law that the

1 judge will give you that you're not to make any inference
2 whatsoever from her failure to testify?

3 And doesn't that fit nicely with the presumption
4 of innocence and the burden of proof? And can you follow the
5 law that the presumption of innocence is like a witness until
6 it's overcome by proof to prove otherwise beyond further than
7 a -- I can't hear you?

8 PROSPECTIVE JURORS: Reasonable doubt.

9 MR. BALLIN: Thank you.

10 Jury No. 14, in deliberations, can you return a
11 verdict of not guilty 10 to 2?

12 PROSPECTIVE JUROR: I don't know. I'm not a
13 lawyer. You tell me.

14 MR. BALLIN: Do you want to be?

15 PROSPECTIVE JUROR: No.

16 MR. BALLIN: Let's go.

17 The judge, I believe, will tell you, can you
18 follow the law that your verdict has to be unanimous?

19 PROSPECTIVE JUROR: Yes.

20 MR. BALLIN: Okay. So it's going to be 12 one
21 way and --

22 PROSPECTIVE JUROR: Right.

23 MR. BALLIN: -- and 12 one way?

24 PROSPECTIVE JUROR: Yes.

25 MR. BALLIN: Will you listen to the opinion of

1 your fellow jurors in arriving at your verdict?

2 PROSPECTIVE JUROR: Yeah.

3 MR. BALLIN: Can you -- I'm going to use this
4 term. Hopefully, it will be the last time we hear it. Can
5 you stick to your own conviction as to the weight of the
6 evidence, but not change your decision just for the sole
7 purpose of returning a verdict?

8 PROSPECTIVE JUROR: No. I'm hard-headed.

9 MR. BALLIN: Okay. Can everybody be hard-headed
10 in that regard? Be your own person in the jury room. Do you
11 understand you have that right and obligation? Do you
12 understand that?

13 In this case, the length of the trial -- we've
14 taken a long time to get to this point. We don't expect the
15 length of the trial to be that long, but I'll ask you if you
16 understand that the length of the trial doesn't take away the
17 importance of it, especially to our client, Ms. Grayson. Do
18 you understand that?

19 The judge will charge you what the elements of
20 the offense are, what the Government has to prove. It's not
21 proving one of the elements, two of the elements, three or
22 four. Whatever the judge tells you, you understand that the
23 burden of proof of beyond a reasonable doubt applies to each
24 element. And the failure to prove every element beyond a
25 reasonable doubt results in a not guilty verdict. Does

1 everybody agree with that?

2 Juror No. 2, you indicated that you stopped
3 social media?

4 PROSPECTIVE JUROR: Yes, sir.

5 MR. BALLIN: How long ago?

6 PROSPECTIVE JUROR: Not too long after the whole
7 Cambridge analytical debacle.

8 MR. BALLIN: Why did you stop?

9 PROSPECTIVE JUROR: I'm sorry?

10 MR. BALLIN: Why did you stop participating --
11 using, I'm sorry, social media?

12 PROSPECTIVE JUROR: It's been beneficial for my
13 mental health.

14 MR. BALLIN: Are you comfortable in explaining
15 further? If not, I'm --

16 PROSPECTIVE JUROR: No, I just -- I don't --
17 sorry, I have a background in software development, and I
18 know the algorithms and how they manipulate people, and I
19 don't appreciate that, so I choose not to participate any
20 longer.

21 MR. BALLIN: Has anyone ever heard the concept
22 that saying something doesn't make it true? Does anyone
23 think there has never been a lie told in a courtroom? The
24 judge will tell you how to judge the credibility of
25 witnesses. And I'll ask if you can follow that law as it

1 applies to the witnesses?

2 If Ms. Grayson chooses to testify, will anybody
3 disbelieve her simply because she is the accused? Again,
4 that's going to be a decision that she and Mr. Levine,
5 Mr. Palmer, and I, along with her, will make that decision
6 when the time comes. Excuse my language, but we ain't there
7 yet. Okay? It will come. And we'll make a decision.

8 But if she does testify, will anybody disbelieve
9 her simply because she is the accused?

10 Anybody been a victim of a crime other than if
11 you've already been up here to testify at side-bar? You
12 don't need to rehash that, but anyone been a victim of a
13 crime that has not voiced what that was?

14 Okay. No. 2, you've already talked. You wanted
15 to say something else?

16 PROSPECTIVE JUROR: I mean, that was more about
17 violent crime, but as far as, you know, had my car broken
18 into.

19 MR. BALLIN: Okay. And we're talking to Juror
20 No. 2 now, correct?

21 PROSPECTIVE JUROR: That's correct.

22 MR. BALLIN: All right. And how long ago was
23 your car break-in?

24 PROSPECTIVE JUROR: I don't know. It's happened
25 several times. There's most recently probably a few months

1 ago, they stole some cables out of the back.

2 MR. BALLIN: Would the fact that you've been
3 victimized have any effect on your ability to be fair and
4 impartial?

5 PROSPECTIVE JUROR: No, sir. This is Memphis.
6 It comes with the territory.

7 THE COURT: Okay. No. 5, I think you raised your
8 hand? Is it something that you're comfortable talking about
9 in open?

10 PROSPECTIVE JUROR: Yeah. I just had my car
11 broken into, catalytic converter stolen. That's it.

12 MR. BALLIN: Same question, you'll be fair and
13 impartial?

14 PROSPECTIVE JUROR: Yes.

15 MR. BALLIN: You'll give the presumption of
16 innocence?

17 PROSPECTIVE JUROR: Yes.

18 MR. BALLIN: You'll require the Government to
19 prove to their case each element of the case beyond further
20 than a reasonable doubt?

21 PROSPECTIVE JUROR: Yes.

22 MR. BALLIN: If you have a reasonable doubt and
23 the judge will tell you what that definition is, but you
24 understand you decide this case for yourself. And we've
25 talked a little bit earlier about actually being two verdicts

1 in one: Your individual verdict, you understand, and your
2 collective verdict.

3 Do you understand you'll never have to justify
4 your decision? It's important. Okay?

5 Anybody have that concern if they were asked
6 after the case is over, what was your decision? Do you
7 understand, A, you don't have to answer, and B, if you do,
8 you still don't have to justify what your decision is?

9 If we, as lawyers, say something that offends
10 you, not intentional, I'll talk for these guys too. Talk to
11 us about it later, if you want, but don't hold it against our
12 respective clients, the Government nor the defense.
13 Everybody in agreement?

14 Anybody have anything at home or in their
15 business that would cause their attention to be diverted from
16 the witness stand to not hear what the witnesses say, not be
17 able to see if there are any videos, not be able to hear any
18 audio, anything that would divert your attention from being
19 that attentive juror that we need here? No. 18 -- 14?

20 PROSPECTIVE JUROR: Yeah, I mean, I got a lot
21 going on right now at work. I've got a lot of bids due
22 tomorrow, Wednesday, Thursday. I mean, so my week is pretty
23 swamped, but, I mean, it could keep me from focusing on that
24 by daydreaming, thinking about work and what I need to get
25 done and things of that sort. I mean, that's my livelihood,

1 that's how I feed my kids, so it's most definitely in my
2 mind. It's been in my mind all day today.

3 MR. BALLIN: What we're going to do, can you
4 stick with us and even though it will be difficult and on
5 your mind, can you still pay attention to what's going on
6 here in this courtroom?

7 PROSPECTIVE JUROR: I mean, I'll try. That's all
8 I can tell you. I can try.

9 MR. BALLIN: Okay. You have coworkers that can
10 cover?

11 PROSPECTIVE JUROR: Somewhat. Somewhat.

12 MR. BALLIN: Okay.

13 PROSPECTIVE JUROR: Not everything.

14 MR. BALLIN: Nobody does it as well as you do, I
15 guess?

16 PROSPECTIVE JUROR: I'll tell you that.

17 MR. BALLIN: Are you sure you're not a lawyer?

18 PROSPECTIVE JUROR: I don't want the headache.

19 MR. BALLIN: Let me talk to you --

20 Your Honor, can I have one moment, please?

21 THE COURT: Certainly.

22 (Conference between defense counsel.)

23 MR. BALLIN: Do any of you know any of the other
24 jurors? It may be hard to believe, I tried a case once in
25 Tipton County that I had a husband and wife on the jury, and

1 I had to ask the husband about you understand unanimous means
2 you don't do what she tells you.

3 Anybody write reviews on social media? And we
4 have people that don't act out on TikTok but look at TikTok,
5 right? That's Juror No. 10 and 11 and 12?

6 PROSPECTIVE JUROR: I don't.

7 MR. BALLIN: Ten and 12.

8 Lawyer 14, do you use social media outside of
9 work?

10 PROSPECTIVE JUROR: Yes, I do.

11 MR. BALLIN: And tell me what you do.

12 PROSPECTIVE JUROR: Instagram, Snapchat, TikTok,
13 Twitter.

14 MR. BALLIN: Do you believe everything on there?

15 PROSPECTIVE JUROR: Everything. No, I'm just
16 playing. No.

17 MR. BALLIN: Serious, that's a --

18 PROSPECTIVE JUROR: No, I do not believe
19 everything on there.

20 MR. BALLIN: Judge, thank you. That's all I
21 have, sir.

22 THE COURT: Certainly.

23 Mr. Scholl?

24 MR. SCHOLL: Thank you, Your Honor.

25 Well, heck, I finally get to say something today.

1 I said that the unfortunate part of going last down the list
2 is you're last down the list, and no one wants to listen to
3 you at this point. And everybody has already said what I
4 wanted to say.

5 I'm proud to be here representing Mr. Grayson.
6 And so I wanted -- one concept I wanted to talk with you all
7 about is when you walked in and the judge explained to you
8 who the parties were, they said Mr. and Mrs. Grayson, right?
9 And so you were asked a question, Juror No. 1, right now,
10 they asked you about Mrs. Grayson, but right now, what would
11 your verdict have to be with regards to Mr. Grayson?

12 PROSPECTIVE JUROR: Innocent.

13 MR. SCHOLL: Juror No. 2? Innocent?

14 PROSPECTIVE JUROR: Innocent.

15 MR. SCHOLL: Why?

16 PROSPECTIVE JUROR: Because you're presumed
17 innocent until proven.

18 MR. SCHOLL: Beyond?

19 PROSPECTIVE JUROR: Reasonable doubt.

20 MR. SCHOLL: I'm not going to do the same thing
21 Mr. Ballin did, but, what I do want to point out, though, is,
22 Juror No. 2, did you pair them up as defendants?

23 PROSPECTIVE JUROR: I'm not sure I understand.

24 MR. SCHOLL: Do you think that they're both
25 considered defendants together? As a couple?

1 PROSPECTIVE JUROR: No, they're two individual
2 people.

3 MR. SCHOLL: Right. Anybody here think that they
4 are defendants as a couple?

5 So let me ask you this, Juror No. 2, can you, if
6 the judge instructs you that Mr. Grayson is to get his own
7 separate trial here, okay? You're supposed to listen to the
8 proof as you hear it from the witnesses and render a verdict
9 to him separately outside of Ms. Grayson, can you do that?

10 PROSPECTIVE JUROR: Yes.

11 MR. SCHOLL: Juror No. 3?

12 PROSPECTIVE JUROR: Yes.

13 MR. SCHOLL: Juror No. 4?

14 PROSPECTIVE JUROR: Yes.

15 MR. SCHOLL: Juror No. 5?

16 PROSPECTIVE JUROR: Well, I guess I have a
17 question.

18 MR. SCHOLL: Okay.

19 PROSPECTIVE JUROR: So both individuals --

20 THE COURT: Speak up and let me see what you're
21 saying.

22 PROSPECTIVE JUROR: Sure.

23 So both individuals are being tried
24 simultaneously, but have each separate considerations?

25 THE COURT: Let me tell you, each will have a

1 separate verdict form because every individual has to be
2 proven individually to be guilty. It's not uncommon for us
3 to have a case in which we might have three, four, or five,
4 or more defendants tried at the same time, but the fact that
5 you might find No. 3 guilty beyond a reasonable doubt on
6 Count 4 does not mean that anybody else is guilty of Count --
7 of that same count. So every individual in every case in the
8 United States District Court is entitled to a judgment as to
9 their case, an individual judgment.

10 So let's be very specific. If you found that
11 Mr. Grayson was not guilty, with all due respect to
12 Ms. Grayson, that does not mean that you would reach the same
13 verdict as to Ms. Grayson and vice versa. In other words,
14 whatever you find as to one defendant is not binding in any
15 way, in any way, or persuasive in any way, as to the verdict
16 as to the other defendant.

17 Good question, though. Good question.

18 PROSPECTIVE JUROR: Got it. Thank you.

19 MR. SCHOLL: Very good question.

20 Thank you, Your Honor.

21 THE COURT: Certainly.

22 MR. SCHOLL: Very good question. And that was a
23 big thing that I wanted to point out because that can get
24 confusing when you have more than one person sitting over at
25 that table. And, of course, when you all came, there was a

1 whole row of people over there, and understand that myself
2 and Mr. Grayson are down here. That's who I'm concerned
3 about is Mr. Grayson.

4 So one of the big concepts is even more difficult
5 when you have a couple, a married couple that comes in, to
6 separate them out and to listen to the proof separately. Can
7 each of you do that? Can you do that for us?

8 PROSPECTIVE JUROR: Yes.

9 PROSPECTIVE JUROR: Yes.

10 MR. SCHOLL: Juror No. 6?

11 PROSPECTIVE JUROR: Yes.

12 MR. SCHOLL: Juror No. 7?

13 PROSPECTIVE JUROR: Yes.

14 MR. SCHOLL: No. 14?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: I got an interesting question. I'm
17 not going to pick on you because you're the lawyer, and I'm
18 not going to pick on you.

19 PROSPECTIVE JUROR: Watch yourself now. Watch
20 yourself.

21 MR. SCHOLL: I'll trade.

22 And so -- but Mr. Ballin had asked you a question
23 about the things weighing on your mind this week, the work,
24 that type of thing. One of the things, this is a very
25 important case. Okay?

1 It's the most important case for Mr. Grayson. So
2 knowing that, can you give your undivided attention to the
3 case even if you have all this other stuff going around.

4 PROSPECTIVE JUROR: I mean, like I said, I'll
5 try. It's all about what I can get done, you know, during
6 the day, things of that sort, before tomorrow or Wednesday or
7 whenever this thing starts.

8 MR. SCHOLL: Well, I want you to understand that
9 as far as during the day goes -- what's going to happen --

10 PROSPECTIVE JUROR: If it has to be a yes or no
11 answer, I'd have to say, no, I'm not going to be able to give
12 my full, undivided attention at this time.

13 MR. SCHOLL: Okay.

14 THE COURT: Let's talk about that at side-bar.

15 MR. SCHOLL: Thank you, Your Honor.

16 PROSPECTIVE JUROR: Now?

17 THE COURT: Yes.

18 (At side-bar on the record.)

19 THE COURT: Well, the reason we're doing it at
20 side-bar is it's more appropriate. It's more fair to you.

21 MR. SCHOLL: That's why I stopped, Judge.

22 THE COURT: Sure. Absolutely. Absolutely.

23 We all understand that everybody has lots of
24 other things to do, and yet the civic obligation to serve on
25 a jury is really important.

1 If you can't do this and give it your full
2 attention, then, you know, we should let you be excused. The
3 only negative thing is that we lose somebody on the jury who
4 has your background, your experience, and all the things that
5 help us have a diverse jury.

6 For example, we no longer excuse lawyers because
7 they're lawyers. We no longer excuse teachers because
8 they're teachers. We know that they need to be in the
9 classroom, but we don't do that anymore.

10 PROSPECTIVE JUROR: Correct.

11 THE COURT: We have kept CFOs of companies
12 because we need a diverse jury, but we also know that you've
13 got things going on.

14 PROSPECTIVE JUROR: Right.

15 THE COURT: So kind of help us out a little bit
16 to understand that. And we're almost certain that the case
17 will not take in terms of presentation by the parties, you
18 know, a full two, two-and-a-half days' presentation is
19 probably about it.

20 PROSPECTIVE JUROR: Right.

21 THE COURT: So this case is, is it fair to say,
22 going to end this week, a high, high, high probability?

23 PROSPECTIVE JUROR: Right.

24 THE COURT: And maybe Thursday. I just don't
25 know.

1 PROSPECTIVE JUROR: So, like I said, the only
2 issue I have is that I have three bids that are due for
3 Shelby County schools tomorrow --

4 THE COURT: Sure.

5 PROSPECTIVE JUROR: -- that at 11 a.m., I have to
6 have those three bids electronically in. I've been trying to
7 talk with the project manager during breaks to see if he
8 could help me out.

9 THE COURT: Sure.

10 PROSPECTIVE JUROR: So I'm trying to work that
11 process through, but right now, it's still up in the air on
12 who is going to handle that for me.

13 I've got another bid due on Wednesday with
14 Jonesboro, Arkansas, school district that I'm going to have
15 to get in. So it's just -- you know, it kind of hit at the
16 wrong time for me on when this came, and I understand
17 everybody --

18 THE COURT: Absolutely.

19 PROSPECTIVE JUROR: -- has things going on, but
20 it does weigh on my mind. Like I said, it's been weighing on
21 my mind all day today.

22 THE COURT: We need a little perspective here.
23 Just a little. How much money are we talking about in these
24 bids?

25 PROSPECTIVE JUROR: Shelby County schools,

1 probably close to \$200,000 for Shelby County schools, and
2 then maybe 50,000 for Jonesboro-Hodge.

3 THE COURT: This helps us understand.

4 PROSPECTIVE JUROR: I understand. I get it.

5 THE COURT: Ok. Well, let's just see if the
6 Government has any questions here?

7 MR. OLDHAM: No, Your Honor.

8 THE COURT: Or, Mr. Ballin, any questions?

9 I tell you what, have a seat in the green chair.
10 I'm going to see what we need to do.

11 You know, he's in an unusual circumstance.
12 What's the Government think? Any problem with letting him be
13 excused.

14 MR. OLDHAM: Anytime you have somebody who
15 doesn't have a salary where --

16 THE COURT: Yeah, I think he's a commissioned --

17 MR. OLDHAM: Where this directly would affect his
18 money coming in, we aren't going to oppose.

19 THE COURT: I mean, is that your impression?

20 MR. SCHOLL: That's why I went a little bit
21 further with that.

22 THE COURT: Normally, if you're a commissioned
23 employee, you're about to lose a big contract, we don't keep
24 you.

25 MR. PALMER: These are schools.

1 THE COURT: I can reschedule him for another
2 month, also three or four months in the summer.

3 MR. BALLIN: That's none of my business, but we
4 have no objection to him being excused in this trial.

5 THE COURT: Okay.

6 MR. SCHOLL: I move to strike for cause, Judge.

7 THE COURT: Okay.

8 MR. OLDHAM: No objection.

9 THE COURT: We're going to let him be excused. I
10 think we've got an issue there.

11 Mr. Sample, I'm not going to reschedule him.
12 He's been here a whole day.

13 MR. SCHOLL: Does Your Honor wish for me to sit
14 down while we place another juror in the jury box?

15 THE COURT: Yes.

16 MR. SCHOLL: Okay.

17 THE COURT: I need you to do that.

18 Okay. We need to let you be excused. We
19 understand.

20 PROSPECTIVE JUROR: I'm sorry, Your Honor.

21 THE COURT: No, thanks for the explanation.

22 PROSPECTIVE JUROR: I just didn't feel right if I
23 was thinking about something else.

24 THE COURT: Do you want to come back in the
25 summer or some other time that's not so busy? What do you

1 want to do?

2 PROSPECTIVE JUROR: Yeah, I mean, for sure. Not
3 for sure, but, yeah.

4 THE COURT: We'll put you down and see how that
5 works out, but we'll move you until -- is summer a better
6 time for you?

7 PROSPECTIVE JUROR: No, not really, I mean, I've
8 got kids in baseball and soccer and all that. It's never
9 really a good time.

10 THE COURT: Fall is better.

11 PROSPECTIVE JUROR: Maybe.

12 THE COURT: September?

13 PROSPECTIVE JUROR: I mean, if you just want to
14 wait two more years.

15 THE COURT: We'll put it off for a while, and
16 you'll get a notice.

17 PROSPECTIVE JUROR: All right. Thank you, Judge.

18 THE COURT: Thank you. No problem.

19 (End of discussion at side-bar.)

20 THE COURT: We're going to let our juror in Seat
21 No. 7 be excused, and we're going to call another person to
22 take his place. I'm sorry, 14. I'm not letting you go.
23 You're staying. Atoka is not going anywhere. You are stuck.
24 We're keeping you. No. 14 -- I'm sorry, 14.

25 CASE MANAGER: Your Honor, the next juror is

1 0041.

2 THE COURT: Okay.

3 CASE MANAGER: No. 41.

4 THE COURT: All right. I need to ask you a
5 couple of questions to start with:

6 What's the most important characteristic for
7 somebody who is going to serve on a jury.

8 PROSPECTIVE JUROR: I believe being honest.

9 THE COURT: Okay. Absolutely. We want to be
10 honest. Absolutely. I am going to ask, you work in retail;
11 is that right?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: If I was going to go find you in
14 retail, is there a type of store I'd go find you in?

15 PROSPECTIVE JUROR: Yes, Kroger.

16 THE COURT: Kroger. Okay. And would I have to
17 go out east to find you or midtown or what?

18 CASE MANAGER: No, Whitehaven area. No,
19 actually, in Southaven.

20 THE COURT: Southaven. Absolutely. Okay. You
21 work in Mississippi then?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. And what makes the jury
24 different? That's probably the most important thing for us
25 to think about conceptually. Why is the jury different? Why

1 is the jury able to reach a verdict when -- that's fair and
2 impartial, complies with the Constitution, whereas for
3 individuals, it would be difficult?

4 PROSPECTIVE JUROR: Because the jury has to come
5 together as one to make a decision.

6 THE COURT: It has to be unanimous.

7 PROSPECTIVE JUROR: Correct.

8 THE COURT: It has to be unanimous, absolutely.
9 In this case, do you know of any reason that you could not
10 serve on the jury, anything at all?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay. Do you know the nature of the
13 allegations? What do you understand the central allegation
14 is in this case as to each defendant?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And I'm going to let you tell me what
17 it is. What do you understand?

18 PROSPECTIVE JUROR: Repeat the question. I'm
19 sorry.

20 THE COURT: Well, this is a case in which the
21 charge is murder for hire. That's sort of sounds awful,
22 right?

23 PROSPECTIVE JUROR: Right.

24 THE COURT: But we don't know what happened yet,
25 right?

1 PROSPECTIVE JUROR: Right.

2 THE COURT: So we can't -- how do the defendants
3 sit here before you today? What are they -- what are they
4 right now?

5 PROSPECTIVE JUROR: Where are they?

6 THE COURT: What are they right now?

7 PROSPECTIVE JUROR: Innocent.

8 THE COURT: Innocent. Right. Exactly.

9 And what's the Government's burden of proof in
10 this case?

11 PROSPECTIVE JUROR: Beyond a reasonable doubt.

12 THE COURT: Beyond a reasonable doubt, exactly.
13 If the Government does prove its case as to one or both of
14 the defendants beyond a reasonable doubt, what verdict would
15 you have to return?

16 PROSPECTIVE JUROR: You said if they do?

17 THE COURT: If the Government does prove it.

18 PROSPECTIVE JUROR: Guilty.

19 THE COURT: If the Government fails to prove it
20 as to either defendant, as to that defendant, what verdict
21 would you have to return?

22 PROSPECTIVE JUROR: Not guilty.

23 THE COURT: Would you even hesitate in your
24 returning the verdict that the law and the facts require?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. Now are you a big social media
2 fan?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Oh, my. Okay.

5 Let's ask this question: What is the type of
6 social media -- do you use it regularly every day.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What would be the site or locations
9 that you go to for social media?

10 PROSPECTIVE JUROR: Instagram and Facebook.

11 THE COURT: Okay. Okay. Do you tend to believe
12 everything that's on social media?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay. Now, I'm going to ask you if
15 you've ever heard of the defendants in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: If there is some proof -- and I think
18 there probably will be, but we'll wait and see -- that they
19 have a presence on social media, or at least Ms. Grayson has
20 presence on social media, we'll wait and see, would that
21 cause you to treat the case differently than if there was not
22 a presence on social media?

23 PROSPECTIVE JUROR: No.

24 THE COURT: In other words -- and I don't mean
25 this in a bad way, but we don't want to have, whatever you

1 want to call it, we don't want to have celebrity spill over.
2 Does that make sense? Everybody is treated equally before
3 the law. Is that okay?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: So I don't know how it's going to
6 come out. You don't know how it's going to come out. And
7 that it can't be influenced by things that are outside the
8 record or that don't have anything to do with proving the
9 case. Is that okay?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. I'm going to ask you this:
12 How long have you been with Kroger?

13 PROSPECTIVE JUROR: Seven and a half years.

14 THE COURT: Okay. All right. Exactly.

15 What was the biggest improvement they made in the
16 area that's near the vegetables? You may not remember this.

17 PROSPECTIVE JUROR: Actually, I work in -- I
18 don't work directly in the store, so . . .

19 THE COURT: Oh, you don't?

20 PROSPECTIVE JUROR: No.

21 THE COURT: They added the better cheese
22 department. Do you remember that? And they also added --
23 they added a lot of sushi, didn't they?

24 PROSPECTIVE JUROR: In certain stores, yes.

25 THE COURT: Okay. Now, you've now told me

1 something that I want to understand. You don't work directly
2 in that context, so we are going to ask you in what context
3 do you work?

4 PROSPECTIVE JUROR: I actually work in the fuel
5 center where the gasoline is sold.

6 THE COURT: Okay. Exactly.

7 And do you know how much cheaper it is to buy
8 fuel at the Kroger Fuel Center with your card than it is to
9 typically buy fuel.

10 PROSPECTIVE JUROR: Yes, \$0.03.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: Everyone gets \$0.03.

13 THE COURT: It's certainly cheaper than that.
14 But if you were going to buy fuel in Atoka, how much more
15 might you pay than down here, do you know?

16 PROSPECTIVE JUROR: I have no idea. They may be
17 cheaper.

18 THE COURT: It can be quite a bit -- quite a bit
19 different. Quite a bit different, absolutely.

20 All right. Well, anything else -- I am going to
21 ask you: Have you ever been in a situation where there's
22 been a threat of violence or harm to you or a family member?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Let's talk about that at side-bar.

25 (At side-bar on the record.)

1 THE COURT: You know in the non-Kroger brand,
2 sometimes it's as much as \$0.30 difference? It's amazing.
3 It's amazing. And you get the discount at the store?

4 PROSPECTIVE JUROR: Yes, I have a card, a Kroger
5 Plus card.

6 THE COURT: Absolutely.

7 All right. Tell me what happened.

8 PROSPECTIVE JUROR: I guess you could say both
9 myself, I had a disagreement with an associate and she called
10 my mom up there, and she spoke with the manager, but then she
11 later came up and confronted me about what happened between
12 me and her daughter and made all kinds of threats like she
13 was going to do in our argument back and forth.

14 THE COURT: And did that take place in the fuel
15 center?

16 PROSPECTIVE JUROR: No. I was at a different
17 store then.

18 THE COURT: Okay. All right. Did you feel
19 concerned about your safety?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Were you behind -- were you
22 protected in some way?

23 PROSPECTIVE JUROR: Yes. I was actually
24 behind -- I was at customer service working at the time, and
25 it's a locked door back there.

1 THE COURT: Okay. I am going to ask this,
2 though: How did that affect you emotionally at the time?

3 PROSPECTIVE JUROR: At the time, it really didn't
4 bother me, but sometimes I run into that young lady. And I
5 actually ran into her mom too, but at the time, I didn't
6 realize it was her, after the fact. Like, I know that lady
7 from somewhere, and I was, like, that's that lady that I got
8 into it with, I had words with.

9 THE COURT: Okay. And I can tell that now you
10 think back on it, it's disturbing?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. Is that -- how long ago would
13 that have been? Must have been within the last --

14 PROSPECTIVE JUROR: Maybe almost two years now.

15 THE COURT: Two years ago? Did you report it to
16 management at the time?

17 PROSPECTIVE JUROR: Actually, management was
18 called. There was several associates that worked with me
19 then, and they were calling for management.

20 THE COURT: Did they come and support you?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Was an officer called?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Either private security or an
25 officer?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Is that something you think about
3 every now and then?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: This is certainly not the same
6 circumstance, but it's important to know about it.

7 PROSPECTIVE JUROR: Right.

8 THE COURT: Has there been any other circumstance
9 where you or family member or close friend had been the
10 subject of a threat of physical violence?

11 PROSPECTIVE JUROR: Yes. Maybe back in November,
12 my brother, he's a supervisor -- he was a supervisor at
13 Walmart. He had an altercation with one of his employees,
14 and that person called their brother that was recently
15 released from prison up there and, basically, my brother had
16 to pull out a firearm because he was scared he was going to
17 be attacked.

18 THE COURT: Sure. Do you know which Walmart
19 store that was?

20 PROSPECTIVE JUROR: Yes. It is a Walmart in Horn
21 Lake, Mississippi.

22 THE COURT: Did that shake you up when you heard
23 about it?

24 PROSPECTIVE JUROR: A little bit. I was scared
25 for my brother.

1 THE COURT: Okay. Any other circumstance where a
2 family member has been threatened with physical violence?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay. Now, in this case, it's
5 different, but it's something we would want to know about --
6 those factors are something we would want to know about.
7 Would those facts in any way affect you in deciding the
8 case -- this case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Okay. Did you start carrying a
11 pistol after that incident with you?

12 PROSPECTIVE JUROR: No.

13 THE COURT: But your brother did or does?

14 PROSPECTIVE JUROR: He had it with him then.

15 THE COURT: The reason I asked is you said your
16 brother had a firearm at the time.

17 PROSPECTIVE JUROR: He still does.

18 THE COURT: Did he get in any trouble for doing
19 what he did?

20 PROSPECTIVE JUROR: He lost his job.

21 THE COURT: Okay. Did you think that was unjust?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Because he was simply defending
24 himself?

25 PROSPECTIVE JUROR: Exactly. Even the police

1 told him he did nothing wrong in the situation because he
2 didn't know, it was dark, he didn't know who that was
3 approaching him at the time.

4 THE COURT: Sure. Exactly.

5 Questions from the Government?

6 MR. OLDHAM: No, Your Honor.

7 THE COURT: Questions from defense?

8 MR. BALLIN: Were you able to hear the names that
9 I called out when you were in the back?

10 PROSPECTIVE JUROR: Yes.

11 MR. BALLIN: Did you know any of the names?

12 PROSPECTIVE JUROR: No, no.

13 MR. BALLIN: If you recognize any of the -- any
14 witnesses by face, even though not by name, will you bring it
15 to your attention?

16 PROSPECTIVE JUROR: Yes, yes.

17 MR. PALMER: May I have a moment?

18 THE COURT: Sure, sure, sure.

19 We're going to leave in about five minutes. As
20 everybody knows, we'll be back tomorrow.

21 MR. PALMER: Thank you, Judge.

22 THE COURT: Have you been doing okay?

23 PROSPECTIVE JUROR: Yes, I'm fine. Long day.

24 THE COURT: Well, it is a long day.

25 Do you usually work the -- I am going to ask your

1 work schedule so I will know and, hopefully, they will
2 listen. What is your regular work schedule.

3 PROSPECTIVE JUROR: Actually, I'm the lead in my
4 department. I normally work six to three, 6 a.m. to 3 p.m.

5 THE COURT: Okay. And you realize that during
6 jury duty, you can't go to work?

7 PROSPECTIVE JUROR: Right.

8 THE COURT: I just want to be sure. I just want
9 to be sure. Okay.

10 PROSPECTIVE JUROR: They know.

11 THE COURT: And you're the lead?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. Got it.

14 Any other questions?

15 MR. BALLIN: No, sir.

16 THE COURT: Any questions?

17 MR. SCHOLL: No, Your Honor.

18 THE COURT: Okay. We're going to let you go back
19 to your seat, and I'm going to check briefly with counsel.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Okay. Anybody else from the
24 Government?

25 MR. OLDHAM: No, Your Honor.

1 THE COURT: Anything else from Defendant 2?

2 MR. SCHOLL: With regards to that juror, no, Your
3 Honor.

4 THE COURT: Anything else?

5 MR. BALLIN: No, sir.

6 THE COURT: Okay. I think we're fine. We're
7 going to let the panel go in just a moment.

8 MR. SCHOLL: And we're going to start -- I guess
9 we'll start back with me tomorrow morning, Judge, my
10 questions?

11 THE COURT: Well, I hope so, yes.

12 MR. SCHOLL: I just wanted to make sure.

13 THE COURT: We'll plan on that, and then we'll
14 catch up around -- when we're done.

15 MR. SCHOLL: That will be fine. Thank you,
16 Judge.

17 (End of discussion at side-bar.)

18 THE COURT: I'm going to ask our juror in Seat 14
19 a question about the exercise we went through at the
20 beginning with Jurors 1, 2, 3, and 4. It's really for
21 everybody to remind everything.

22 What was the lesson from the exercise where the
23 jurors in Seats 1, 2, 3, and 4, looked out and attempted to
24 identify people by the role that they had in the courtroom?
25 What was the lesson?

1 PROSPECTIVE JUROR: You were trying to see by
2 looking at someone if you could tell if they were guilty or
3 not?

4 THE COURT: Right. And we decided in that case
5 that if this was a Boeing aircraft and you're putting bolts
6 on it, and you get it 67 percent right, is that good enough?
7 Right?

8 PROSPECTIVE JUROR: Right.

9 THE COURT: Maybe it's 65, but I have to think
10 about it. That's not good enough. That is not good enough
11 in this case either, is it?

12 PROSPECTIVE JUROR: No.

13 THE COURT: We have to have proof beyond a
14 reasonable doubt, which is a significant standard, a high
15 standard. Is that okay?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. And, finally, if somebody
18 brings up something they're not supposed to bring up, I want
19 to make sure we've covered this very carefully, what do you
20 need to say? One, will you say something?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: What would you say?

23 PROSPECTIVE JUROR: I will tell them to stick
24 with the facts of this case. Other cases or past experiences
25 don't matter. We're just here for this -- only this case.

1 THE COURT: Absolutely. Stick with the facts and
2 the law, shortcut there. Stick with the facts and the law,
3 absolutely.

4 Now, ladies and gentlemen, we will move much more
5 quickly. I had hoped to get a little further, significantly
6 further today, but that's okay. Our job is to do it right,
7 not to do it fast. But we will do it much faster tomorrow
8 morning, I think. So I'm going to have all of you come back.

9 When you come back in, our 14 jurors, you, of
10 course, come back to these seats. When all of you come in,
11 of course, you come back to your seats there. It is very
12 important, very important that you be here tomorrow at 8:30.
13 If you cannot be here -- I'm talking about downstairs in jury
14 assembly, downstairs in jury assembly.

15 So if for some reason, something happens, you get
16 hit by a gravel truck, make sure -- or something happens,
17 then please attempt to -- before you go to the hospital, call
18 us and tell us. Tell us that that has happened because we
19 will be -- we have to wait -- we will have to look for you.
20 We'll have to wait for you. It's very, very important to be
21 here on time.

22 If everybody is here on time, we will start in
23 here before nine o'clock, and we will then get our jury
24 selected. I would suggest to you we're within -- just taking
25 a while today, but we will be within two hours of that for

1 sure, certainly before lunch. Certainly before lunch, and
2 then we'll move through the case rather quickly.

3 Everybody can understand, though, that there's
4 really no point in having a jury trial if you're not going to
5 make sure that the jury understands their role and is
6 prepared to do it. This is the most -- one of the most
7 important things we do. So I hope you please will bear with
8 us. We apologize for not being faster, but no one here, if
9 we were sitting in either seat, any seat out there, would
10 want to put speed in front of justice. That is not what we
11 do.

12 So, for all of you, what time are you going to be
13 here?

14 PROSPECTIVE JURORS: 8:30.

15 THE COURT: 8:30. 8:30. And we will start in
16 here before nine o'clock and, hopefully, if everybody is here
17 really at 8:30, we'll probably start in here at a quarter
18 till. And then we'll have our jury, and that will move the
19 case right along.

20 Thank you all for your patience today. We're
21 going to let you be excused, but I've got to tell them seven
22 things.

23 MR. BALLIN: Judge, I know you'll hate me, but I
24 need to ask you one thing before you excuse them.

25 THE COURT: Oh, okay. Do you want to come to

1 side-bar and tell me real quickly?

2 MR. BALLIN: It will be two seconds.

3 THE COURT: Then I've got to tell them seven
4 things to remember, which they probably remember already.

5 (At side-bar on the record.)

6 THE COURT: Well, I think I've got enough to go
7 ahead.

8 MR. BALLIN: There's a very close family friend
9 in the audience.

10 THE COURT: They need to be excused.

11 MR. BALLIN: Nathan Franklin. It's a young --
12 Nathan Franklin.

13 THE COURT: We'll get him.

14 MR. BALLIN: Okay.

15 (End of discussion at side-bar.)

16 THE COURT: I am going to have one of our jurors,
17 who we will need to excuse, come up, and I'm looking for his
18 name right now.

19 Have you got it there, Mr. Sample?

20 MR. BALLIN: Judge, there's another one.

21 THE COURT: I've got them all.

22 MR. BALLIN: There's two. Judge, there's another
23 one.

24 THE COURT: I think there are two individuals who
25 know some people well in the case. Oh, I see them back

1 there, absolutely.

2 So I'm going to ask you to stay as soon as we let
3 everybody go, and there's one other person. Where is the
4 young man? We'll have you stay just for a moment because I
5 need to make sure that --

6 MR. BALLIN: And the pretty lady next to him.

7 THE COURT: I got it. I got them all. So if you
8 don't mind staying, we may need to let you go because of
9 several circumstances.

10 All right. Now, seven things to remember. First
11 thing, don't discuss the case among yourselves. Please don't
12 do that. In fact, try to be kind and don't say anything
13 about us at all because, you know, you may be complaining
14 today. It's better not to. Just keep an open mind. Enjoy
15 your basketball or whatever else you want to this evening,
16 but don't talk among yourselves about the case.

17 Don't talk with anybody else about the case.
18 You're going to go home or go -- you'll be going home
19 probably, and you will then be asked, what are you doing? I
20 will know tomorrow if I'm going to be on a criminal case in
21 federal district court, and it will be -- it will conclude
22 this week, and I cannot tell you anything else.

23 And, of course, sometimes people say, well, you
24 can tell me. And the answer is, no, I cannot. So do not --
25 just -- that's all you can say.

1 So also don't speak to the witnesses, lawyers, or
2 parties. Now, we try to keep everybody clearly separated,
3 but you might run into somebody. Do not speak to them.
4 Certainly don't get on the same elevator with them. Now,
5 they will be here earlier than -- they will be here early
6 tomorrow, and they will be in a different part of the
7 building. They should be most of the time. And that will be
8 true of the Government also. But if you see them do not
9 speak to them at all because they have to tell me if they
10 spoke to you, and it's a little complicated, so please don't
11 do that. It would look like they were trying to tamper with
12 the jury, and they cannot do that.

13 The fourth thing is if somebody tries to talk to
14 you about this case, and I'm going to warn you that that
15 could happen. I'm not saying it will, but it could. If
16 somebody tries to talk to you as you leave the building, if
17 somebody tries to talk to you as you enter the building,
18 don't talk to them about the case, period, zero, none at all.

19 So be very cautious about that. If you have an
20 issue in that regard, if somebody does that, let us know, and
21 we'll take the appropriate steps.

22 The fifth thing is don't do any research or make
23 any inquiry. Absolute prohibition. No exceptions. No
24 research of any kind, and that includes anything, obviously,
25 on social media and whoever the TikTok fans were. I had one

1 or two. I know. No checking these things out, absolutely
2 not.

3 I will tell you that if you do that, one, you
4 shouldn't. But the second thing is you really have to tell
5 me. You're not going to get in trouble but without telling
6 me, we create a terrible issue that we don't want to have in
7 the case. You will not get in trouble, but you've got to
8 tell me, so don't do it in the first place. If somehow you
9 make a mistake and something happens, just tell them, I've
10 got to see the judge tomorrow. And we'll take care of it
11 appropriately. We understand that things can happen, but
12 very important.

13 The fifth thing is -- let's see what we got.
14 Okay. And we also -- Seat No. 11. Apparently, we need to
15 see Seat No. 11 also. Is that right? Just briefly we're
16 going to ask you to stay just for a moment. I don't think
17 there's a problem. I just want to be sure.

18 Okay. Well, we were down to don't do any
19 research of any kind. You've got that nailed down. Avoid
20 the media about the case. Media includes everything in the
21 world. That includes social media, absolutely no being
22 influenced by that. Mistakes can happen. You just have to
23 tell me about it. And the last thing is keep an open mind.

24 This case will move quite quickly once we have
25 our jury, but recognizing that what we're doing is essential

1 to the constitutional application of the law in the United
2 States. So this is very important.

3 Well, for all of you, I'm going to keep a couple
4 of you. I'm going to keep my juror in Seat 11 just for a
5 moment. I'm going to keep my two potential jurors back there
6 for just a few minutes.

7 For all the rest of you, we need you to go to
8 jury assembly. That is on the second floor. The rest of
9 you, tomorrow morning, when you come in at 8:30, you will
10 actually gather outside this courtroom.

11 So ladies and gentlemen, we're going to have to
12 be here at 8:15 for all of you, staff. For the defense
13 counsel, Government counsel, and my staff we'll be here
14 early. Sorry, that's what we're going to have to do.

15 We have another case that's starting. We've got
16 another case that's running on the ninth floor. We have
17 another case that will start on this floor in the opposite
18 courtroom, so we're very busy. Be happy that we're busy,
19 guys. We're doing the work that we're supposed to be doing.
20 So we're okay with that, but it's going to mean that we are
21 calling on you for patience tomorrow. We're going to have to
22 work this out.

23 You're going to check out downstairs on the
24 second floor. What time will I see you back? I saw you
25 earlier. 8:30. Okay. And we'll see you on this floor,

1 which is a surprise. I wasn't going to do that.

2 Thank you all very much. We're going to let you
3 be excused. We'll see you tomorrow at 8:30.

4 I am going to keep juror in Seat No. 11. Come
5 around to the side-bar. And we'll have counsel come to
6 side-bar.

7 (At side-bar on the record.)

8 THE COURT: How are you doing?

9 PROSPECTIVE JUROR: I'm good.

10 THE COURT: Good. Good. Good. Well, it's been
11 slow today, sometimes faster.

12 Yes, ma'am, our situation?

13 MR. PALMER: I saw her raise her hand, so that's
14 why I was -- maybe I misread you.

15 PROSPECTIVE JUROR: I was going to ask -- I was
16 asking you just told us if we came here or if we assembled
17 downstairs.

18 THE COURT: You are actually going to come here
19 because we have another group coming in for jury assembly
20 tomorrow. And we'll try to -- and jury assembly will be
21 informed that they might need to remind everybody. It's
22 going to mean that we will start as close to 8:30 as we can.
23 It probably will be at least ten minutes, but just because we
24 don't like to have people to have to congregate in the hall.
25 So we will move as fast as he can. Good deal. Thank you

1 very much.

2 Okay. I'm going to have my potential jurors come
3 up. At least -- I think I can have both of them, is that
4 okay?

5 MR. BALLIN: Dory Greenberg and Nathan Franklin.

6 THE COURT: Okay.

7 MR. BALLIN: Dory's brother is my brother-in-law.

8 THE COURT: Memphis is a small town.

9 MR. BALLIN: Nathan's best friend is my nephew.

10 MR. SCHOLL: We'll keep them both.

11 THE COURT: How are you doing today? Do you know
12 that guy?

13 PROSPECTIVE JUROR: Yeah, but I couldn't scream
14 that out or anything. I didn't think that was appropriate.

15 THE COURT: No, that's all right. I wouldn't
16 have been --

17 PROSPECTIVE JUROR: We both do.

18 THE COURT: And you're Mr. Franklin?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Okay. It sounds like both of you
21 should be allowed not to come back tomorrow. I think the
22 Government agrees with that?

23 MR. OLDHAM: Sure, Your Honor.

24 THE COURT: Because we know that you're related
25 in some way?

1 PROSPECTIVE JUROR: Yeah, yeah.

2 THE COURT: In some way to Mr. Ballin. I know
3 that you're going to miss being here. How old are you?

4 PROSPECTIVE JUROR: Twenty-nine.

5 THE COURT: Twenty-nine. We've had a really
6 older jury today. It's been very unusual. Usually, we have
7 a lot of youngsters.

8 Well, thanks for being here, and we're going to
9 let both of you be excused. Don't worry about it. We will
10 not see you. If you need any paperwork, you do need to get
11 it on the second floor. Good deal. Thank you.

12 PROSPECTIVE JUROR: Thank you so much.

13 THE COURT: We have one more that needs to see
14 us.

15 Yes, sir, if you would come up. We have one more
16 gentleman who needs to see us.

17 Mr. Minard?

18 PROSPECTIVE JUROR: Minard.

19 THE COURT: Okay. M-I-N-A-R-D?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Okay. Exactly. Were you in the
22 Navy?

23 PROSPECTIVE JUROR: Yeah, I'm retired.

24 THE COURT: You're retired. Well, which rank
25 were you in when you retired?

1 PROSPECTIVE JUROR: A chief.

2 THE COURT: Okay. And you -- they run the Navy,
3 right, chiefs run the Navy?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: That's always what I've understood,
6 and they say you were an essential member of our team. I
7 assume that you run the team and the officer claims credit.

8 PROSPECTIVE JUROR: I run the QA section for the
9 officers.

10 THE COURT: Right. Well, when we get a note from
11 the United States Navy, and it says that it will be a
12 disruption to their operations, we normally let you be
13 excused, and so I don't have any problem with that.

14 But I want to check with the United States and
15 any problem with that?

16 MR. OLDHAM: No, Your Honor.

17 THE COURT: Mr. Ballin, what's your thought?

18 PROSPECTIVE JUROR: No problem.

19 THE COURT: Okay.

20 MR. SCHOLL: And no problem from me.

21 THE COURT: Well, we appreciate you being here
22 today, and where are you -- are you from Millington area?
23 Where are you from?

24 PROSPECTIVE JUROR: I work out of Drummonds.

25 THE COURT: You work out of Drummonds. Okay,

1 exactly. Do you know the history of Drummonds?

2 PROSPECTIVE JUROR: A little bit.

3 THE COURT: Okay. They built a new school there
4 and not that many years ago, right?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Yeah, it's a big improvement. Did
7 you ever see the old school?

8 PROSPECTIVE JUROR: It's a church now.

9 THE COURT: But this new school is a big
10 improvement.

11 PROSPECTIVE JUROR: I'm a migrant here. I came
12 in here -- I retired here in 2003.

13 THE COURT: Okay. Well, we're glad to have you.
14 And, you know, everybody agrees that you should be excused.
15 And so thank you for your service, obviously. You know I'm
16 Army?

17 PROSPECTIVE JUROR: I went to my first day at
18 school at Fort Underwood.

19 THE COURT: Really? Absolutely. Absolutely.

20 PROSPECTIVE JUROR: Your people, they treated me
21 good.

22 THE COURT: Absolutely. It's a good place.
23 We're going to let you be excused. I'm going to let you keep
24 this. I don't think I need to keep this information. You
25 may want to keep it just to remind your deputy commander

1 every now and then of what he said about you.

2 PROSPECTIVE JUROR: Do I need to let them know
3 I've been excused down below?

4 THE COURT: When you go to the second floor, tell
5 them that you've been excused in the case, and you will not
6 need to report again tomorrow.

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Okay. Thank you, all.

9 PROSPECTIVE JUROR: Thank you.

10 CASE MANAGER: Juror 55 is in the gallery.

11 THE COURT: Yes, Juror 55. How are you doing?

12 PROSPECTIVE JUROR: About yourself or your family
13 members being threatened, I know a few years back, an
14 ex-boyfriend had threatened me and my family and threatened
15 to come and hurt us.

16 THE COURT: Let me ask just because I know your
17 name, but they don't and we only know numbers here. You're
18 55 to them. But I am going to ask just to state your name
19 because this is not going to -- this will take care of it I
20 think.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Your full name is?

23 PROSPECTIVE JUROR: Shunta. It's S-H-U-N-T-A.
24 And the last name is Katron.

25 THE COURT: K-A-T-R-O-N.

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: Okay. The reason I was checking is
3 we have to convey information to jury assembly, and I've got
4 the numbers, but now I've got your name. Do you think you
5 need to be excused in this case? I think that was the
6 question or what do you think?

7 PROSPECTIVE JUROR: I think so because it's still
8 kind of a stressful thing for me.

9 THE COURT: I tell you what, tell me what
10 happened so we'll understand a little better.

11 PROSPECTIVE JUROR: He called and threatened me,
12 my mother and my sisters and came to the house, like, banging
13 on the door and everything and threatened to hurt us
14 physically.

15 THE COURT: Did you call the authorities?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Did anything happen as a result of
18 that?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Okay. Do you need to be excused or
21 you just want to let me know? And I'm not -- I'm not sure
22 which one it is.

23 PROSPECTIVE JUROR: I think I might have to be
24 excused.

25 THE COURT: Okay. Was this -- how long ago was

1 this event?

2 PROSPECTIVE JUROR: Like about four years ago.

3 THE COURT: Was it a traumatic event that
4 affected you at the time?

5 PROSPECTIVE JUROR: (Moving head up and down.)

6 THE COURT: Yes or no?

7 PROSPECTIVE JUROR: Yes. Yes, Your Honor.

8 THE COURT: And did it affect anyone else in your
9 family?

10 PROSPECTIVE JUROR: I think it affected my
11 sisters.

12 THE COURT: Okay. Let me check one thing.

13 Let me let you have a seat over there, and let me
14 talk briefly to the lawyers because I think I can tell them
15 something that might be of assistance.

16 She is way down on the list to be called. It's
17 highly unlikely that we would ever get to her. And then if
18 we did, of course, we'd have to have a long discussion
19 probably about some other things.

20 MR. SCHOLL: Because this one was out in the
21 hallway with the person of concern.

22 THE COURT: I know. So I'm feeling like maybe
23 she realizes that she probably shouldn't be on the case
24 having sat next to someone in the hallway that we shouldn't
25 be sitting next to. Isn't that your impression?

1 MR. SCHOLL: That was my impression.

2 THE COURT: I think that -- I can't read -- mind
3 read. I'm just like you. I'm thinking -- I think maybe
4 we're having a response. I can ask her about that, but I
5 feel like that might be --

6 MR. OLDHAM: I think if we all agree that she be
7 let off --

8 THE COURT: Sure.

9 MR. OLDHAM: -- then would you ask her if
10 somebody was trying to communicate just, so we know if there
11 is a roaming element out there, and she's already off the
12 case.

13 THE COURT: That's very fair. I think that's the
14 only way I can do that.

15 MR. OLDHAM: I think that's the way I would
16 request that you do that, Your Honor.

17 MR. SCHOLL: No objection.

18 MR. BALLIN: No objection.

19 THE COURT: Let me have you come up for a moment.

20 Ms. Katron? I'm going to need to let you be
21 excused in the case, so we're going to dismiss you. I do
22 need to know one piece of information, and if you can, tell
23 me did you -- were you sitting next to someone who attempted
24 in any way to speak to others in the case or spoke out in an
25 attempt to call out to perhaps Ms. Grayson or somebody else

1 or one of the lawyers? Were you there when someone did that
2 or do you remember?

3 PROSPECTIVE JUROR: I know when I was sitting on
4 the bench, I didn't know -- in the hallway, I didn't know
5 that they were witnesses or somehow connected to the case.
6 And they were saying some things about the case, and I wasn't
7 sure.

8 THE COURT: And by they, you mean some people
9 that were sitting near you or with you?

10 PROSPECTIVE JUROR: Yes, Your Honor.

11 THE COURT: Did that person attempt to speak to
12 you or did they attempt to be overheard by you? It's a
13 little difference there, but did they either try to speak to
14 you or did they speak in such a way to make sure that you
15 heard?

16 PROSPECTIVE JUROR: It was spoke in a way to make
17 sure they were heard.

18 THE COURT: Okay.

19 Questions by the Government?

20 MR. OLDHAM: Was it things about the case or
21 about specific witnesses that they were talking about?

22 PROSPECTIVE JUROR: They were just -- they just
23 mentioned the defendants' names.

24 MR. OLDHAM: Okay.

25 THE COURT: Was it unfavorable or a way to speak

1 unfavorably or do you know?

2 PROSPECTIVE JUROR: They seemed friendly towards
3 the defendants. I'm not sure. It seemed friendly, but . . .

4 THE COURT: But it might not have been, you just
5 couldn't tell?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: But they were speaking about persons
8 in the case, though?

9 PROSPECTIVE JUROR: Yes. Yes, Your Honor.

10 THE COURT: Okay. All right.

11 Other questions then?

12 MR. SCHOLL: Were there other jurors around when
13 they were doing this?

14 PROSPECTIVE JUROR: No. It was another juror,
15 but she was all the way on the other end of the hallway.

16 MR. SCHOLL: So it was just you by yourself on
17 the bench?

18 PROSPECTIVE JUROR: Uh-huh.

19 MR. BALLIN: No questions.

20 THE COURT: We really appreciate your willingness
21 to serve but also you were willing to tell us that
22 information. I don't know it will be necessary for anybody
23 to recontact you in that regard. If it is necessary for
24 anybody to recontact you, ask them if they received authority
25 from me, from Judge McCalla, to contact you. Otherwise, they

1 should not be contacting you about this matter.

2 PROSPECTIVE JUROR: Okay.

3 THE COURT: Now, if someone, a person on the
4 bench attempts to contact you, you should notify the Court.
5 You should tell Mr. Nabors, and you should tell him he must
6 tell Judge McCalla. So if you don't mind doing that?

7 PROSPECTIVE JUROR: Yes, Your Honor.

8 MR. PALMER: Did you see anybody in the parking
9 lot or doing anything?

10 PROSPECTIVE JUROR: No.

11 MR. PALMER: Okay. Just making sure.

12 THE COURT: Okay. We appreciate your being here,
13 and we're going to let you be excused. Just go down to the
14 second floor, and make sure you have any paperwork you need.

15 PROSPECTIVE JUROR: Okay. Thank you.

16 THE COURT: That's it. Okay. We're going back
17 to our positions just for a moment. All right.

18 (End of discussion at side-bar.)

19 THE COURT: All right. I think we're going to
20 have to leave in just a moment, and I'm going to ask you --
21 I don't usually ask you to -- well, sometimes I do. I don't
22 usually ask you to be here in position by 8:20, but I need
23 you to be here by 8:20 tomorrow. It's just too many people
24 in the building.

25 In order to avoid a problem, I need everybody to

1 be here early. I don't know that we have anything else that
2 we need to cover.

3 Now, Mr. Scholl, we're going to start back with
4 you, but then everybody else gets a little bit of --

5 MR. SCHOLL: I'm sorry, Your Honor. I'm having
6 problems hearing. I apologize.

7 THE COURT: Do you want me just to start -- or
8 let the Government or do you want to go in the regular
9 rotation?

10 MR. SCHOLL: Doesn't matter to me, Your Honor. I
11 can start back tomorrow because I haven't finished my first
12 round anyhow.

13 THE COURT: Right. I know, but do you want me to
14 start back with you or do you just want to finish? Do you
15 want to start back and run through the rotation again?

16 MR. SCHOLL: If I can finish mine, Judge, it
17 won't take very long.

18 THE COURT: No, that's fine. That's fine. I
19 just want to make sure we're in sequence. So we'll start
20 back with you tomorrow. Then I'll come to the Government and
21 ask if there are any additional questions and I'll come back
22 to Mr. Ballin and ask if there are any additional questions
23 for those that have not been -- as to which inquiry has not
24 been made. So that's how we'll handle that.

25 Now, everybody understands I want to reconfirm

1 how I'm going to receive the strike sheets. I'm just
2 reconfirming -- well, I actually don't know for sure. I know
3 I get the Government's strike sheet.

4 Mr. Scholl, how are we handing that? Are you
5 going to let Mr. Ballin fill it out or are you going to fill
6 it out?

7 MR. SCHOLL: I'll fill it out, Your Honor.

8 MR. BALLIN: I'm prohibited from writing things
9 in state court because they just don't read my writing.

10 THE COURT: It's because we can't read your
11 writing.

12 MR. SCHOLL: And mine is not much better, Your
13 Honor, but at least I'll feel like I've done something.

14 THE COURT: I think that that's a good idea. So
15 I'll get the strike sheets, single strike sheet from the
16 defense.

17 All right. Well, we've taken a little too long,
18 but that's the way it is. Anything else then from -- I'm
19 just going to ask you in order.

20 Anything else from the Government?

21 MR. OLDHAM: No, Your Honor. Thank you.

22 THE COURT: No problem.

23 Mr. Palmer, anything else from the defense?

24 MR. PALMER: Can't think of anything, Your Honor.

25 THE COURT: Okay.

1 Mr. Scholl, anything else from Defense 2?

2 MR. SCHOLL: No, Your Honor. Thank you.

3 THE COURT: Okay. Thank you all very much.

4 We'll let you all be excused.

5 (Adjournment.)

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C E R T I F I C A T E

I, TINA DuBOSE GIBSON, do hereby certify that the foregoing 341 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the trial held on the 25th day of March, 2024, in the matter of:

UNITED STATES OF AMERICA

vs.

ASHLEY GRAYSON AND JOSHUA GRAYSON

Dated this 7th day of May, 2024.

s/Tina DuBose Gibson

TINA DuBOSE GIBSON, RPR, RCR
Official Court Reporter
United States District Court
Western District of Tennessee